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THE
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THE MERITS AND DEMERITS OF THE NATIONAL ORIGINS PROVISIONS FOR SELECTING IMMIGRANTS

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President Hoover issued a proclamation March 22 making effective July 1, 1929, the national origins provisions of the Immigration Act of 1924. On the same day the President reiterated his objections to this method of quota fixing, objections which he had already declared in his acceptance speech and which he had formed as a member of the committee appointed to work out quotas on the basis of national origins. The likelihood that Congress might repeal these provisions during the special session has since become impossible because of the negative vote of the Immigration Committee.

The national origins provisions have been moot ever since they were first introduced by the late Representative Rogers of Massachusetts, April 11, 1924. Practically every patriotic society in America has come to their support, apparently because these societies do not understand how the national origins quotas have worked out. The provisions have encountered marked opposition both from those who are discriminated against under the bill and from those who realize that mathematical formulas can solve only arbitrarily when the original data are incomplete. Objections led to the suspension of national origins quotas in 1927 and 1928.

In this paper I shall explain the changes that will be wrought in immigration if the national origins provisions are finally carried out. To date these have never been adequately treated despite the importance of the matter. I shall

detail the new light thrown upon the natural increase of the whites enumerated in 1790, and upon the ethnic composition of each stream of people that has contributed to the present make-up of our population. The methods whereby these data were worked out and whereby quantitative expression was given to the national origins provisions will be detailed and criticized. Finally, it will be shown that quotas based upon national origin do not constitute scientific immigration.

I

The general effect of the new provisions will be sharply to reduce immigration from Germany, Scandinavia, and the Irish Free State and to increase that of Great Britain and North Ireland. German immigration will be reduced 25,270 or 49 per cent; Scandinavian, 11,931 or 63 per cent; Irish Free State, 10,714, or 38 per cent. The quota for Great Britain and North Ireland will be increased 31,714 or 93 per cent. The sum of all quotas is reduced 10,933.

The intention of the framers and the supporters of these provisions was, apparently, to increase the so-called Nordic immigration and to decrease the non-Nordic element. Ironically, however, the national origins provisions increases the non-Nordic. The quotas of Italy, Poland, Russia, and Hungary, for example, are increased. Those of the Scandinavian countries, of France, and of Germany are reduced.

The quotas under the national origins provisions as finally made effective are given in Table I. The quotas operative from 1924 to 1929 represent 2 per cent of any particular national stock living in the United States in 1890. Thus the Italian quotas, 3,845, represents 2 per cent of the Italians living in the United States at the time of the census of 1890. The reductions and increases in respective quotas are given in the two final columns.

A complete picture of the net effect of the new quotas is not given in Table I. Two of the nations whose quotas are increased have not utilized the smaller quota based upon the census of 1890. Those nations whose quotas are most reduced under the national origins have been sending nearly a full quota annually. This is represented quantitatively in Table II.

TABLE I

CHANGES IN IMMIGRATION QUOTAS ON THE BASIS OF NATIONAL ORIGINS*

Country	Quota on Basis of National Origins	Quota on Basis of 2 Per Cent of 1890 Foreign Population	Change from 1890 Basis to 1929 Basis	
			Absolute	Per Cent
Armenia	100	124	— 24	— 19
Australia	100	121	— 21	— 17
Austria	1,413	785	+ 628	+ 80
Belgium	1,304	512	+ 792	+155
Czechoslovakia	2,874	3,073	— 199	— 6
Danzig	100	228	— 128	— 56
Denmark	1,181	2,789	— 1,608	— 58
Estonia	116	124	— 8	— 7
Finland	569	471	+ 98	+ 21
France	3,086	3,954	— 868	— 22
Germany	25,957	51,227	—25,270	— 49
Great Britain and North Ireland	65,721	34,007	+31,714	+ 93
Greece	307	100	+ 207	+207
Hungary	869	473	+ 396	+ 83
Irish Free State	17,853	28,567	—10,714	— 38
Italy	5,802	3,845	+ 1,957	+ 51
Latvia	236	142	+ 94	+ 66
Lithuania	386	344	+ 42	+ 12
Netherlands	3,153	1,648	+ 1,505	+ 91
Norway	2,377	6,453	— 4,076	— 63
Poland	6,524	5,982	+ 658	+ 11
Portugal	440	503	— 63	— 13
Rumania	295	603	— 308	— 51
Russia, European and Asiatic	2,784	2,248	+ 536	+ 24
Spain	252	131	+ 121	+ 92
Sweden	3,314	9,561	— 6,247	— 65
Switzerland	1,707	2,081	— 377	— 18
Syria and Lebanon	123	100	+ 23	+ 23
Turkey	226	100	+ 126	+126
Yugoslavia	845	671	+ 174	+ 26
Total	153,714†	164,647†	—10,933	— 7

*_Congressional Record_, Appendix, 70th Congress, 2nd Session, pp. 5347–5348.

†Includes 37 minimum quotas of 100 each.

TABLE II

QUOTAS AND IMMIGRANTS ACTUALLY SENT

Country	Quota based (*) on Census of 1890	Average (†) Annual Number of Immigrants 1926-1928	Increase or (*) Decrease on basis of national origins
Great Britain and North Ireland	34,007	29,502	+31,714
Netherlands	1,648	1,567	+ 1,505
Italy	3,845	3,953	+ 1,957
Germany	51,227	48,727	—25,270
Irish Free State	28,561	28,750	—10,714
Sweden	9,561	8,902	— 6,247
Norway	6,453	6,115	— 4,076
Denmark	2,789	2,629	— 1,608

*Taken from Table I.

†Calculated from Annual Reports of Secretary of Labor for fiscal years 1926-1928; p. 63, p. 92, p. 76.

Assuming that immigration continues in the same degree as during the years 1926–1928 the new quotas will reduce actual quota immigration from Germany, the Irish Free State, and Scandinavia by about forty-three thousand. Italy will send about 2,000 more quota immigrants each year. Great Britain, North Ireland and Netherlands will be entitled to send approximately 33,000 more each year, but will hardly do so inasmuch as they have not filled lesser quotas in the past. Therefore the loss of 43,000 immigrants from Germany, Irish Free State, and Scandinavia will be offset only in minor part by increases from Italy and other countries entitled to send more in the future. The influx of quota immigrants[1] from quota countries will consequently be reduced by around 35,000 on this score.

[1]Countries send more than quota immigrants during many years. Thus in 1928 Italy sent 12,686 wives and children of American citizens born in Italy; these were not included in the quota for Italy.

The immigration figures for the eight months ending February 28, 1929, indicate a decline in immigration from the leading immigrant sending countries:[2]

Great Britain and North Ireland	20,018	Sweden	7,242
Irish Free State	11,748	Norway	5,083
Germany	39,466	Denmark	2,140
		Italy	2,591

If the quotas assigned under the national origins provisions are compared to the population of respective European countries it will appear that an Irish Free Stater has thirteen times the chance of admission of an Englishman. A Swede has only two-fifths, a Norwegian two-thirds, and a German between one-fourth and one-third the chance of an Englishman.[3] In short, quotas are not related to the populations of European countries.

The new quotas do not apply to Canada, Mexico, and South American countries. Consequently the heaviest present immigration influx is not restricted. During the fiscal year ending June 30, 1928, 73,154 immigrants were registered as from Canada, and 59,016 from Mexico. During the fiscal year ending in 1927, 81,506 were registered from Canada and 67,721 from Mexico.[4] The annual average influx from Mexico during the years 1921–1928 numbered 49,719.[5] Representative Fiorello La Guardia contends that the annual average number of immigrants from Mexico, registered and smuggled, is 350,000 and that 1,500,000 Mexicans have entered this country illegally.[6]

It is obvious, therefore, that the national origins provisions will not achieve the goal of the restrictions until all immigration is placed upon a quota basis.[7]

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[2]Calculated from *The United States Daily*, March 23, 1929.

[3]See testimony of S. W. Boggs of the committee of experts which determined the quotas. *United States Daily*, March 9, 1929.

[4]*Annual Report of Secretary of Labor*, June 30, 1928, p. 73.

[5]*United States Daily*, January 8.

[6]*Current History*, November, 1928, p. 230 in "National Origins Plan as a Bar Against Catholics and Jews."

[7]See for instance the recommendation of Secretary of Labor, James J. Davis, *Annual Report of the Secretary of Labor*, for fiscal year ending June 30, 1928, pp. 135-140.

II

Attempts have frequently been made to compute the extent to which the 3,172,444 whites enumerated in the census of 1790 have multiplied since that time. Because of the absence of the necessary census and vital statistical data an answer can be ascertained only indirectly. No political importance attached to such estimate until the passage of the Immigration Act of 1924. W. S. Rossiter estimated that in 1920 the numerical equivalent of the descendants of the whites enumerated in 1790 was 47,330,000, or a fifteen fold increase. The assumptions underlying his estimate are untenable, however,[8] for it rests upon the postulates (a) that our records of net immigration are sufficient and (b) that natives and immigrants have experienced the same rates of natural increase.

Professor Rufus Tucker, recognizing that our records of net immigration are incomplete and that nothing is known of early natural increase in America, worked backward through the census. He estimated that the descendants of the whites of 1790 numbered 39,700,000 in 1920, 35,610,000 being full-blooded descendants and 4,090,000 being "equivalent persons" of 8,180,000 half-blooded descendents.[9] Professor Tucker assumed a 30-year generation. On the basis of a 40-year generation his method yields 45,965,000. As the same method, with slight modifications, has been employed by the committee of experts appointed to compute quotas under the national origins provisions, the length of generation is important.[10]

This committee carefully analyzed the age statistics of the censuses 1890 to 1920 and divided the white population of the United States as in Table III.[11]

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[8]See *Census Monograph I*, p. 97; also Chapter IX and Appendices A, B, C. For Rossiter's estimate of 35,000,000 in 1900 see *A Century of Population Growth*, pp. 86-90.

[9]"The Old Americans in 1920," *Quarterly Journal of Economics*, August, 1923, Volume 37, p. 760. Professor Tucker adds "I feel confident that the estimate of 35,610,000 for the number of persons wholly descended from those residing here in 1790 is accurate within 10 per cent." (p. 761.)

[10]See below p. 159.

[11]The methods of the committee are described in Part III.

TABLE III

TOTAL WHITE POPULATION, DESCENDANTS OF WHITES ENUMERATED IN 1790, AND IMMIGRANT STOCK IN UNITED STATES 1890-1920*

Year	Total White Population (c)	Native Stock (a)	Immigrant Stock			
			Total (b)	Immigrants (c)	Children of Immigrants (c)	Grandchildren & later generations (c)
1890	55,101,258	30,342,466	24,668,792	9,121,867	9,794,347	5,752,578
1900	66,809,196	34,272,951	32,356,245	10,213,817	13,139,149	9,183,279
1910	81,731,957	38,101,175	43,630,782	13,345,545	15,907,074	14,378,163
1920	94,820,915	41,288,570	53,532,345	13,712,754	19,190,372	20,629,219

(a) Estimated.
(b) Descended from and including white immigrants arriving since 1790.
(c) Given in census.
**Senate Document No. 65*, 70th Congress, 1st session, pp. 8-9.

According to the data given in this table there were 94,820,915 whites living in the United States in 1920. Of these, 41,288,570 constitute the equivalent of the descendants of the 3,172,444 whites enumerated in 1790. The remainder, 53,532,345, consists of immigrant stock. The immigrant stock consists of: (1) 13,712,754 whites who were born in foreign countries and living in the United States at the time of the census of 1920; (2) 19,190,372 native-born whites of foreign parentage; and (3) 20,629,219 grandchildren, great grandchildren, and later generations of immigrants who came to this country after 1790.

The committee of experts broke each of these four elements, as of 1920, into its constituent racial (national) parts. That is, immigrants, children of immigrants, grandchildren and later generations of immigrants who arrived after 1790, and the descendants of the whites enumerated in 1790, were split up into English, French, German, Hungarian, etc. The results are given in Table IV.[12]

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[12]Taken from *Senate Document 259*, 70th Congress, 2nd Session, p. 5. For methods of deriving this Table see Part III, below.

The meaning of this table is self-evident. In column 1, for example, Austria is assigned a total of 843,051. This means that of the 94,820,915 whites living in the United States in 1920, 843,051 were born in, or were descended from ancestors born in, present day Austria. This 843,051 consists of four parts: (1) 305,657 persons born in Austria who lived in the United States on January 1, 1920; (2) 414,794 native-born whose parents were born in Austria; (3) 108,500 native-born children of native-born parents but of Austrian ancestry (grand parents, great grand parents, etc.) who immigrated into the United States *after* 1790; (4) 14,100 who were descended from Austrians who were enumerated in the census of 1790.

The data in Tables III and IV constitute the best existing approximation of the racial (national) composition of the American whites. The committee of experts, therefore, has made a real contribution even though these figures are imperfect.

The data in Table III indicate that the 3,172,444 whites enumerated in 1790 had added 825 per cent natural increase by 1890, and 1,200 per cent by 1920.

In Part III the method of arriving at the above figures will be described and criticized. It will be contended that immigration quotas based on these figures are not accurate.

III

That part of the Immigration Act of 1924 which provided for the limitation of quotas of immigrants upon the basis of national origins is contained in paragraphs (b), (c), and (d), section (11):

> (b) The annual quota of any nationality for the fiscal year beginning July 1, 1927, and for each fiscal year thereafter, shall be a number which bears the same ratio to 150,000 as the number of inhabitants in continental United States in 1920 having that national origin (ascertained as hereinafter provided in this section) bears to the number of inhabitants in continental United States in 1920, but the minimum quota of any nationality shall be 100.
>
> (c) For the purpose of subdivision (b) national origin shall be ascertained by determining as nearly as may be, in respect of each geographical area which under section 12 is to be treated as a separate country (except the geographical areas specified in subdivision (c) of section 4) the number of inhabitants in continental

TABLE IV

APPORTIONMENT OF THE WHITE POPULATION OF THE UNITED STATES BY COUNTRY OF ORIGIN

Country of Origin	Total	Colonial Stock	Post Colonial Stock (a)			
			Total	Immigrants	Children of Immigrants	Grandchildren and later Generation
Total	99,820,915	41,288,570	53,532,345	13,712,754	19,190,372	20,629,219
Quota Countries	89,506,558	40,324,400	49,182,158	12,071,282	17,620,676	19,490,200
Austria	843,051	14,100	828,951	305,657	414,794	108,500
Belgium	778,328	602,300	176,028	62,686	62,042	51,300
Czechoslovakia	1,715,128	54,700	1,660,428	559,895	903,933	196,600
Denmark	704,783	93,200	611,583	189,934	277,149	144,500
Estonia	69,013	----	69,013	33,612	28,001	7,400
Finland	339,436	4,300	335,136	149,824	146,612	38,700
France	1,841,689	767,100	1,074,589	155,019	325,270	594,300
Germany	15,488,615	3,036,800	12,451,815	1,672,375	4,051,240	6,728,200
Great Britain and Northern Ireland	39,216,333	31,803,900	7,412,433	1,365,314	2,308,419	3,728,700
Greece	182,936	----	182,936	135,146	46,890	900
Hungary	518,750	----	518,750	318,977	183,773	16,000
Irish Free State	10,653,334	1,821,500	8,831,834	820,970	2,097,664	5,913,200
Italy	3,462,271	----	3,462,271	1,612,281	1,671,440	178,500
Latvia	140,777	----	140,777	69,277	56,000	15,500
Lithuania	230,445	----	230,445	117,000	88,645	24,800
Netherlands	1,881,359	1,366,800	514,559	133,478	205,381	175,700
Norway	1,418,592	75,200	1,343,392	363,862	597,130	382,400
Poland	3,892,796	8,600	3,884,196	1,814,426	1,779,570	290,200
Portugal	262,804	23,700	239,104	104,088	105,416	29,600
Rumania	175,697	----	175,697	88,942	88,755	3,000
Russia, European and Asiatic	1,660,950	4,300	1,656,694	767,324	762,130	127,200
Spain	150,258	38,400	111,858	50,022	24,531	37,300
Sweden	1,977,234	217,100	1,760,134	625,580	774,854	359,700
Switzerland	1,018,706	388,900	629,806	118,659	203,547	307,600
Syria and Lebanon	73,442	----	73,442	42,039	31,403	----
Turkey	134,756	----	134,756	102,669	31,487	600
Yugoslavia	504,203	----	504,203	220,668	265,735	17,800
All other quota countries	170,868	3,500	167,368	71,553	93,815	2,000
Non quota countries	5,314,357	964,170	4,350,187	1,641,472	1,569,696	1,139,019

(a) Post Colonial Stock is the same as Immigrant Stock given in Table III.

United States in 1920 whose origin by birth or ancestry is attributable to such geographical area. Such determination shall not be made by tracing the ancestors or descendants of particular individuals, but shall be based upon statistics of immigration and emigration, together with rates of increase of population as shown by successive decennial United States censuses, and such other data as may be found to be reliable.

(d) For the purpose of subdivisions (b) and (c) the term "inhabitants in continental United States in 1920" does not include (1) immigrants from the geographical areas specified in subdivision (c) of section 4 of their descendants, (2) aliens ineligible to citizenship or their descendants, (3) the descendants of slave immigrants, or (4) the descendants of American aborigines.

The first step in the application of these provisions consisted in determining what proportion of the 94,820,915 whites enumerated in 1920 consisted of descendants of the 3,172,444 whites enumerated in 1790. This determination is rendered difficult by the fact that census data are lacking. The population was not divided into native and foreign until 1850, nor classified by age and nativity of parentage until 1870. However, beginning with the census of 1890, nativity of parentage has been correlated with age in the census returns. Hence we know that in 1920 of the native white children born 1915–1920 and listed in the census as 0–5 years old 75.38 per cent had native parents. The parents of these children were if we assume a 30-year generation, 30 to 35 years old in 1920. Of the native whites aged 30–35 years in 1920, 76.76 per cent had native parents. The parents of whites 30–35 years old in 1920 were 60–65 years old in 1920. Of natives aged 60 to 65, 77.26 per cent had native parents. We must have these averages for those natives aged 90–95 in 1920 and for those natives who, had they survived, would be aged 120 to 125 years in 1920. We get the data for the latter by noting what per cent of those aged 95 to 100 in 1890 had native parents. The percentage of native parentage for these two last groups are respectively 93.61 and 94.49. On the basis of this hypothetical ladder of averages we conclude that of the 10,328,937 native white children aged 0–5 years in 1920, 39.5[13] per cent are descended from the whites of 1790. That is, 4,079,930 represent "colonial" stock.

[13] $75.38 \times 76.76 \times 77.26 \times 93.61 \times 94.49 = 39.5$ per cent.

In order to refine the above method somewhat averages are taken of the percentages of native parentage for each 5-year age group as revealed in the four censuses, 1890–1920. Thus, those born in 1880 to 1885 and aged 35 to 40 in 1920 were aged 25 to 30 in 1910, 15–20 in 1900, and 5–10 in 1890. If the four percentages of nativity of parentage for these four groups are added the mean will be 76.7 per cent. (See Table V.)

In Table V are given the averages from each census for each 5-year age group. These averages have been employed to work out the number of descendants of the whites enumerated in 1790 as given in Tables II and III.[14] That is, we learn that say 4,079,930 of the 10,328,937 native whites aged 0–5 years in 1920 are descended from the whites of 1790; 474,000 of the 555,191 native whites aged 75–79 in 1920 are descended from the whites of 1790; and so on. These several estimates are added and yield a total of 41,288,570 whites in 1920 who are descended from the whites of 1790. (See Table III.)

Apparently the length of generation assumed by the committee of experts is one of 30 years. This length is important for the greater the number of generations the smaller will be the percentage of persons in any 5-year age group who are descended from the whites of 1790. Thus if a 25-year generation were assumed the percentages given in footnotes 13 on page — would be altered and a resultant of 34.03 per cent[15] would be secured. Hence only 3,514,937 of the 10,328,937 native-born children, 0–5 years old, would be descendants of the stock of 1790.

Even if the length of generation were deemed correct, the percentages of nativity of parentage of persons born prior to 1820 and aged 70 or more years in 1890 are based upon what may be unrepresentative samples of the population. For only a small percentage of those born earlier than 1820 sur-

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[14]The precise application of these averages has been described by S. W. Boggs and Dr. Joseph A. Hill. See *Congressional Record*, Appendix, March 12, 1927, p. 5949. See also p. 10. Hearing before the Committee of Immigration, House of Representatives, 69th Congress, 2nd Session, January 18, 1927.

[15]$75.36 \times 76.01 \times 74.76 \times 90.04 \times 95.74 \times 93.82 = 34.03$ per cent. See percentages for 1920 in Table V and percentages under 1890 for 1815–20 and 1790-95.

TABLE V*

NATIVE WHITE POPULATION

1920		1910		1900		1890		Period in which born	Average percentage having Native Parents
Age	Per cent. Native Parentage	Age	Per cent. Native Parentage	Age	Per cent. Native Parentage	Age	Per cent. Native Parentage		
0– 5	75.38							1915 to 1920	75.38
5– 10	74.56							1910 to 1915	74.56
10– 15	75.96	0– 5	75.60					1905 to 1910	75.78
15– 20	76.78	5– 10	76.59					1900 to 1905	76.69
20– 25	76.12	10– 15	73.38	0– 5	74.57			1895 to 1900	75.36
25– 30	76.01	15– 20	74.77	5– 10	74.19			1890 to 1895	74.99
30– 35	76.76	20– 25	76.27	10– 15	75.17	0– 5	75.15	1885 to 1890	75.84
35– 40	77.65	25– 30	77.15	15– 20	75.84	5– 10	76.17	1880 to 1885	76.70
40– 45	76.21	30– 35	76.05	20– 25	75.08	10– 15	75.57	1875 to 1880	75.73
45– 50	74.95	35– 40	74.63	25– 30	73.20	15– 20	73.34	1870 to 1875	74.03
50– 55	74.76	40– 45	74.30	30– 35	73.38	20– 25	74.14	1865 to 1870	74.15
55– 60	75.03	45– 50	74.47	35– 40	73.55	25– 30	74.57	1860 to 1865	74.41
60– 65	77.26	50– 55	77.00	40– 45	75.91	30– 35	77.07	1855 to 1860	76.81
65– 70	82.66	55– 60	82.23	45– 50	81.56	35– 40	82.47	1850 to 1855	82.24
70– 75	87.79	60– 65	87.50	50– 55	87.19	40– 45	88.00	1845 to 1850	87.62
75– 80	90.04	65– 70	89.96	55– 60	89.66	45– 50	90.61	1840 to 1845	90.07
80– 85	91.71	70– 75	91.82	60– 65	91.77	50– 55	92.65	1835 to 1840	91.99
85– 90	93.03	75– 80	93.54	65– 70	93.55	55– 60	94.42	1830 to 1835	93.64
90– 95	93.61	80– 85	94.45	70– 75	94.60	60– 65	95.48	1825 to 1830	94.53
95–100	92.50	85– 90	93.97	75– 80	94.32	65– 70	95.41	1820 to 1825	94.57
		90– 95	93.67	80– 85	94.41	70– 75	95.74	1815 to 1820	94.61
		95–100	92.98	85– 90	94.06	75– 80	95.55	1810 to 1815	94.81
				90– 95	93.75	80– 85	95.25	1805 to 1810	94.50
				95–100	92.72	85– 90	95.03	1800 to 1805	95.03
						95–100	94.49	1795 to 1800	94.49
							93.82	1790 to 1895	93.82
						100+	92.66	Before 1790	92.66

*Table given in Hearings before the Committee of Immigration and Naturalization, House of Representatives, Sixty-ninth Congress, Second Session, January 18, 1927 (Hearing No. 69.21), p. 9.

vived to be enumerated in 1890. By 1890 those born between 1790 and 1800 were 90 to 100 years old; those born 1800 to 1810 were 80 to 90 years old; those born 1810 to 1820 were aged 70 to 80 years; those born 1820 to 1830 were aged 60 to 70 years. The ratio of the number of persons surviving in 1890 to the number living in the United States 1790 to 1830 is given in Table VI.

TABLE VI

WHITE POPULATION, 1790 TO 1830, AND NATIVE WHITES SURVIVING TO 1890

Years of Census	White Population Enumerated in Census (a)	Number of Survivors in 1890 (b)	Ratio of Survivors to Enumerated White Population
1790	3,172,444	654 (c)	0.00021
1800	4,306,446	16,971 (d)	0.00394
1810	5,862,073	203,303 (e)	0.03468
1820	7,862,166	905,858 (f)	0.11522
1830	10,537,378	2,365,271 (g)	0.22456

(a) *A Century of Population Growth*, p. 80.
(b) Census of 1890, Volume I, Part 2, p. xvii.
(c) Native whites 100 years and over.
(d) Native whites 90 years and over.
(e) Native whites 80 years and over.
(f) Native whites 70 years and over.
(g) Native whites 60 years and over.

A consideration of the ratios in the last column of Table VI makes it clear that for each 100,000 whites who were enumerated in 1790 only 21 native whites born in or prior to 1790 survived in 1890; but 394 in 100,000 survived from those enumerated in 1800; 3,468 in 100,000 for those enumerated in 1810; 11,522 in 100,000 enumerated in 1820, and 22,456 in 100,000 enumerated in 1830. Not until we reach the census of 1820 do we find over 10 per cent of those enumerated surviving to 1890. The survivers disappear, or become proportionately less, in each census taken since 1890. In last analysis, therefore, the earliest averages of nativity of parentage employed in the ladder given in Table V, rest upon the census of 1890.

Not until after 1820 do we find enough survivors in 1890 to give us an acceptable and representative picture of the population. It must be concluded, therefore, that the averages are not representative until after 1820; and that the estimated 41,288,570 descendants of the 3,172,444 whites enumerated in 1790 is impugned, for approximately every ladder of averages includes one average for the uncertain years 1790–1820.

One is inclined to distrust the results derived from these averages even more when it is noted that in no other country of the world has the population experienced a natural increase of 825 per cent in a century, or 1,200 per cent in 130 years.

In 1920, 94,820,915 whites were enumerated. Since 41,288,570 of these are descendants of the "colonial stock," that is, of those enumerated in 1790 the remaining 53,532,345 constitute immigrant stock. The immigrant stock consists of three parts: (1) 13,712,754 immigrants; (2) 19,190,372 native-born children of immigrants; (3) 20,629,219 grandchildren and later generations of immigrants who came to the United States *after* 1790. The census of 1920 disclosed the number of immigrants and children of immigrants. The number of the third group (20,629,219) was obtained by subtracting from 53,532,345 the sum of parts (1) and (2) (32,903,126).

The second step for the committee of experts was to divide up each of the four elements, colonial stock, immigrants, children of immigrants, and grandchildren, etc., of immigrants arriving since 1790, into their national origins. This division is accurate for only one of these four elements, the immigrants, for these are classed as Austrians, Hungarians, British, etc., in the census of 1920.

The 19,190,372 children of immigrants were reported in 1920 according to the birth place of their parents. Hence classification was on the basis of pre-war political geography. One knew how many had parents born in Austria-Hungary, but not the number whose parents were born in Austria, in Hungary, in Yugoslavia, etc. Division on the basis of post-war political geography was according to the statistics of mother tongue reported in 1910 and 1920. Thus if 50 per

cent of those who reported their parents as born in Austria-Hungary stated their mother tongue to be German these were classed as of present-day Austrian origin; if 10 per cent reported the language of Yugoslavia as mother tongue then 10 per cent of those with parents born in Austria-Hungary were classed as of Yugoslavian origin; and so.[16]

It is yet more difficult to split up the 41,288,570 descendants of the whites of 1790 into their several origins. How many are of British, how many of Dutch, how many of Spanish origin? It is assumed that these 41,288,570 have the same racial composition as the 3,172,444 whites enumerated in 1790. The racial (national) origin of the latter is determined on the basis of names given in *A Century of Population Growth* and derived from the returns of the Census of 1790. This list of names was not complete and had to be supplemented by studies made under the ægis of the American Council of Learned Societies. It was concluded that about 77 per cent of the names of heads of families in this first census seemed to be of British origin. Hence 77 per cent of the 41,288,570 descendants of the stock of 1790, or 31,803,900, are alleged to be of British and North Irish origin. Likewise .034 of one per cent of these 41,288,570 are judged to be of origin in present day Austria on the basis of the records of names in 1790. The complete classification on the basis of names is given in Table IV, column 2, under the heading "colonial stock." Obviously, to classify into nations 41,288,570 persons on the basis of an incomplete list of the names of persons who lived here 140 years ago is a task to which even Clio is unequal. It is assumed first that the distribution of names is accurate and second that each racial stock increased in the same degree from 1790 to 1920.

Distribution of the descendants of the whites of 1790 and of the children of immigrants on the basis of national origin has been shown to be practically impossible. Yet such distribution is simple compared to the distribution, on basis of national origin, of the 20,629,219 grandchildren and later generations of immigrants who arrived since 1790.

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[16]See testimony of S. W. Boggs, *U. S. Daily*, March 8 and 9, 1929.

No immigration records were kept until 1820. Estimates of numbers differ.[17] Estimates of origin must necessarily differ even more so. The figures for the period 1820 to 1867 are for alien passengers and from 1868 to 1903 for immigrants arriving. The early official records of immigration are not complete for due account is not taken of arrivals by way of Canada.[18] In short, not all who came were registered.

Not all who were registered were registered correctly. Many non-British immigrants came in British vessels and were registered as British. Thus a Swede who came on a British vessel would be listed as "British." S. E. Johnson attests to this: "The figures relate not to British subjects alone, but to the total exodus to the countries mentioned. It is true that the earlier figures were concerned almost entirely with men of our own nationality (British), but as the facilities of transport increased, the numbers gradually contained more of the foreign element."[19]

The computations are complicated yet more, for the committee of experts had to make allowance for the time of arrival of a given group of immigrants. Thus 1,000 British arriving in 1820 would have more descendants in 1920 than 1,000 Swedes who arrived in 1860. Precisely what formulas were employed has not been disclosed. It was assumed, however, that all stocks increased at the same rate. This assumption is based upon the further assumption that, even though Poles and native-born children of Polish parentage average more offspring than English and native-born children of English parentage, native grandchildren of Polish and English grandparentage will average the same number of children.[20] This is open to some question. According to a study supervised by Dr. Hill nearly twenty

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[17]See *Abstract of the Seventh Census*, p. 131; *Census of 1860*, p. xxxi, and H. P. Fairchild, *Immigration*, 1925 edition, p. 57.

[18]The official records give 135,956 for 1820-1830; Tucker places the figure at 200,000 (*Census of 1860*, p. xxix). See G. Tucker, *Progress of the United States* and J. Chickering, *Immigration into the United States*.

[19]*Emigration from the United Kingdom to North America, 1763–1912*, p. 345.

[20]Dr. J. A. Hill defended this assumption. See *U. S. Daily*, March 11, 1929.

years ago, native-born married women of Polish parentage averaged 5.1 children whereas native-born married women of English and Scotch parentage averaged only 2.9. Polish and English married women averaged respectively 6.2 and 3.7 children. It is to be questioned whether the averages become equal in the third generation.[21] Provided these averages did become identical the marriage rates would also need to be identical.

It was also necessary for the committee of experts to translate these records of immigration, etc., into post-war political geography, and to make allowance for pre-war political changes such as the transfer of Alsace-Lorraine in 1871. Nearly 40 such changes were considered significant by the committee. In view of the lack of data, if 1,000 immigrants, registered as German, were admitted in 1822 it would be little short of arbitrary to allot some of these to France or to any other nation on the basis of political changes during the past 130 years.

How the committee dealt with all these problems relative to "grandchildren and later generations" is not clear. A memorandum signed by S. W. Boggs *explains* it as follows:[22]

The nationality of "grandchildren and later generations of immigrant stock" is determined by means of "an extended series of computations . . . utilizing the immigration statistics from 1820 to 1870, applied cumulatively by decades, with due weight for the time in which immigrants arrived. These factors are utilized in terms of the political geography in which they are reported, by applying them cumulatively, in turn, to certain statistics for the same geographical area, in each instance, derived from the four censuses from 1890 to 1920, inclusive. Adjustments have been made at each stage of the computation for all changes in political geography in the period concerned. A final adjustment was made on the basis of the 1920 census list of

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[21]See table, pp. 599–600, "Fecundity of Women of Native and Foreign Parentage, *Publications of the American Statistical Association*, Volume 13, 1912-13. The number of cases is too small for extensive generalization.

[22]*Congressional Record*, Appendix, March 12, 1927, p. 5949.

countries to the list of immigration quotas areas. The figures thus derived are not equal to the number of 'grandchildren and later generation' of each nationality of origin, but they are presumed to be proportional to such numbers. The total 20,600,000 of this factor are, therefore, attributed to countries of origin by ancestry in the proportion thus derived."

Thus far it has been noted that the white population of the United States in 1920 consisted of four elements: (1) descendants of whites of 1790; (2) immigrants; (3) children of immigrants; and (4) "grandchildren and later generations." Each of these four elements had to be split up into its component national origin parts (Austrians, British, Russian, etc.) Of the four elements only one can be thus subdivided on the basis of census data, namely, immigrants. The other three elements are split up in a manner that is likely to be characterized as arbitrary.

The quota of immigrants for each country is based upon these four elements, only one of which is based directly upon census returns. We find this quota by multiplying by $\frac{150,000}{89,506,558}$ [23] the number attributable to some nationality. For example, 843,051 whites in 1920 were ultimately of Austrian derivation. (See Table IV.) Hence Austria is assigned a quota of 1,413.[24]

Quotas have been worked out four times on the basis of national origins. Each time they have proved different although in the committee's report of February 21, 1929, we are assured that "further study would not appreciably modify" the quotas.[25] The extent of these changes may be illustrated by giving the quotas for 10 of the leading quota countries as calculated at different times. These are given in Table VII.

In light of the above fluctuations in quotas, and in the light of the uncertainty that attaches to the estimates of three

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[23] In 1920 there were 94,820,915 whites i nthe United States. Of these, 89,506,558 were attributed to quota countries. The remainder (5,314,357) were attributed to Canada, Mexico, and other non-quota countries.

[24] $\frac{150,000}{89,506,558} \times 843,051 = 1413$

[25] *Senate Document 259*, p. 3, 70th Congress, 2nd Session.

of the four elements used to determine quotas on basis of national origins, it necessarily follows that any quota whatever will be viewed with suspicion and deemed arbitrary by nations whose quotas have been reduced.

TABLE VII

NATIONAL ORIGIN QUOTAS*

Country	Date of Determination of Quota			
	1924	1927	1928	1929
Great Britain and North Ireland	85,135	73,039	65,894	65,721
Germany	20,028	23,428	24,908	25,957
Irish Free State	8,330	13,862	17,427	17,853
Italy	5,716	6,091	5,989	5,802
Poland	4,535	4,978	6,090	6,524
Czechoslovakia	1,359	2,248	2,726	2,874
Sweden	3,072	3,259	3,399	3,314
Norway	2,053	2,267	2,403	2,377
Russia	4,002	4,781	3,540	2,784
Austria	2,171	1,486	1,639	1,413

**Congressional Record*, Appendix; 70th Congress, 2nd Session, pp. 5347–5348. Changes for every quota country are given there.

It is contended, and soundly, that a major error in the computation of any of the four elements has only a minor effect upon the final quota, for there is approximately one unit in the immigration quotas to each 600 inhabitants in the United States. Hence if 1,000,000 too many were attributed to British origin the British quota would be increased only 1667. However, this is not generally understood by those opposing the national origins provisions and by foreign groups. Hence, because it *is* known that errors are involved in computing the stock attributable to any nationality, it is inferred that the quotas have been characterized by arbitrariness.

IV

Should the national origins provisions be repealed? If so, should quotas be fixed upon the basis of the census of 1890?

Answer to these questions involves consideration of the real ends of restriction of immigration, of which there are but

two: (1) so to limit the absolute number who are admitted each year as to permit their economic and social absorption;[26] (2) to admit only those healthy immigrants who are readily assimilable and who will improve rather than impair the quality of the existing population.

The first test is not met by immigration under national origins and will not be met until immigration from Canada, Mexico, South America and other non-quota areas is placed upon a quota basis. The declining birth rate abroad may eventually eliminate the danger of an inundation of immigrants such as threatened at the close of the World War.

The second test is not met by the national origins provisions. The immigrants under these provisions are no more assimilable than those admitted on the basis of the census of 1890. No provision whatever is made to require these immigrants to pass a test indicating that they are at least equal to the average resident stock.

Fixing quotas on the basis of the census of 1890 is no more satisfactory than fixing quotas on the basis of national origin. One can hardly contend, as does H. H. Curran, that the 1890 measure "helps us to become more homogeneous by sending to us every year a miniature or replica of that which we are already according to original national stock."[27] Certainly the national origins provisions accomplish this as well as the 1890 measure. As nativity of immigrants in the census of 1890 was based upon pre-war geography many adjustments had to be made to translate this into terms of post-war political geography, even as under national origins.

The only defense of the 1890 measure is the practical one that countries have become accustomed to it and no longer view it as discriminatory.

It seems to the writer that a sound American immigration policy requires two things: (1) to fix a specific annual quota of say 200,000; (2) to devise a combined test of intelligence and ability and admit the first 200,000 to pass such a test.

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[26]On Absorption Capacity see J. W. Gregory, *Human Migration and the Future*, Chapter 16 (1928).

[27]Quoted by Roy G. Garis, *Immigration Restriction*, p. 284 ff. See Chapter VIII for consideration of merits of 1890 measure.

The costs of administration should be borne largely by those taking the test at designated points abroad. Nationality should no longer be used as the primary test of ones admittability.[28]

V

CONCLUSIONS

1. The Committee of Experts appointed to work out the quotas on the basis of national origins has performed a notable service in throwing light upon the ethnic composition of the American people.
2. The national origins act is statistically unworkable because:
   - (a) We lack precise, adequate data for those born prior to 1830. Further we do not know the true length of a generation.[29]
   - (b) The descendants of the whites of 1790 cannot be satisfactorily classified on the bases of names of heads of families in the census of 1790, or otherwise.
   - (c) It is open to question how well the children of immigrants can be classed on the basis of mother tongue reported in the census.
   - (d) The grandchildren and later generations of immigrants cannot be adequately classified into nationalities because:
     - (1) Records of immigration are incomplete;
     - (2) Registration of country of origin was inaccurate;
     - (3) Equal rates of increase are assumed;
     - (4) Adjustments to post-war political geography must in part prove arbitrary.

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[28]Concerning tests see *Research Report No. 58*, National Industrial Conference Board, pp. 106 ff; also M. R. Davie, *Immigration Policy*, 1923, p. 41.

[29]A. J. Lotka has calculated the mean length of one generation from mother to daughter to have been 28.33 years; from father to son, 32.76 years. See "On the True Rate of Natural Increase," *Journal of the American Statistical Association*, September, 1925, pp. 310–313, pp. 334–336. See also A. J. Lotka, "The Size of the American Families in the Eighteenth Century," pp. 154–170, June, 1927, same journal.

3. The national origins quotas tend to breed ill will because their derivation is not understood, and because they are believed arbitrary on the grounds that we lack statistical data for their calculation. Hence the adoption of these quotas is impractical and ill-advised.
4. Basing quotas upon the census of 1890 is preferable to national origins upon only one ground: the former are understood and accepted and therefore breed no international ill will.
5. The primary basis of immigration restriction, within limits of a specified quota, ought to be health, and ability to do and to learn, rather than nationality.

THE POSITION OF CIVIL SERVANTS IN GERMANY

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The public officer in Germany is defined by law as any person employed in the service of the Reich (the national government) or in the direct or indirect service of a member state, whether for lifetime, for a period, or only temporarily, whether he has taken the oath of office or not.[1] This sweeping definition covers every sort of person (even elective officers, cabinet members and other political figures) who draws money from a public treasury, and many who are not paid at all, but fill honorary offices. Ordinarily, however, certain classes, such as members of the army and of the navy, are excluded from various provisions of the laws governing officers in general. In the sense of most laws an officer is a person engaged in some aspect of the regular public administration, or in teaching in public schools or universities. The word officer in this sense is nearly equivalent to civil servant. It cannot be made too clear that the word officer applies to all grades of civil servants, from lowest to highest. An officer may be a janitor or a dean, a clerk, a librarian, the director of a ministerial department, a doorkeeper. Everyone who has regularly entered the classified civil service is an officer, with the rights and privileges, duties and responsibilities, of the official status.

There are three ranks of the service, namely: lower, middle, and higher. An officer who enters one of these ranks may rise within it, but unless under very exceptional circumstances, no transfers are possible from one rank to another, because of the differences in the educational background required for admission to the respective ranks.

Constitutional and Legal Position

German civil servants, whether of highest or lowest rank, alike enjoy the special protection of the national Constitution and of various laws. The Constitution placed the civil service on a broader and more democratic basis than it had previously

[1]Criminal Code, Strafgesetzbuch, Section 359.

possessed; but in many other respects the constitutional provisions merely strengthen, rather than revolutionize, the position already enjoyed by civil servants.

All citizens without distinction are made eligible for public office, according to standards set by law, and in conformity with their qualifications and accomplishments. All exceptional provisions against women as public officers are abolished (Constitution, Article 128).

Public officers are appointed for life, unless a law specifically fixes another term. The duly earned rights of officers (to promotion, pension, etc.) are inviolable, and officers may bring suit to enforce their property claims (Constitution, Article 129).

No entry of fact unfavorable to an officer may be made in his personal record unless an opportunity has first been given him to express himself on the matter. The officer is guaranteed the right to examine his personal record. No officer can be provisionally suspended from office, temporarily or permanently placed in retirement or transferred to another office with less salary, except under the conditions and through the forms specified by law. A complaint or protest, with the possibility of a rehearing, must be allowed against every official disciplinary sentence (Constitution, Article 129).

If a public officer, in the performance of his official functions, injures a member of the public, the responsibility for recompense rests primarily upon the state or the body corporate which employs the officer. It may seek redress from him (Constitution, Article 131).

A national law is to provide the details making effective the constitutional provision (Article 130) that public officers are entitled to special representation as officers. It may be remarked at this point that although such a law has not yet been passed, there are several strong associations of civil servants, which are recognized by various laws and ordinances as the appropriate organs to represent their membership when advisory committees are to be organized and other work is to be performed, in which civil servants may have a particular interest.

Although public officers are servants of the public as a whole, and not of a party, they are guaranteed freedom in

their political opinions, and freedom of association (Constitution, Article 130). Public officers, as well as members of the armed forces, are to be granted the necessary leave of absence for campaign purposes, in case they are candidates for seats in the national legislature (Reichstag) or a state legislature. If they are elected to these bodies, they require no leave of absence in order to fulfill their duties as members (Constitution, Article 39). All officers must take an oath of loyalty to the national Constitution (Constitution, Article 176).

As a rule, the officers entrusted with the direct national administration in a state are to be citizens of such state. The officers, employees and laborers engaged in the national administration are to be located in their home districts if they so desire, in so far as this is possible and not prevented by considerations of their qualifications or the needs of the service (Constitution, Article 16).

These constitutional provisions, except as they refer specifically to national officers, are applicable to all other public officers, including those of the state and its various subdivisions. The federal commonwealth (the Reich) numbers among its powers that of legislation to establish the fundamental principles of the law of officers of all public bodies (Constitution, Article 10), thus guaranteeing certain minimum standards of protection to all persons employed in any type of public service.

No law of officers has as yet been passed under the new Constitution, but that of 1907[2] is still in effect. This law, which has been amended repeatedly, is no longer satisfactory in detail, and will probably be supplanted in the near future by a new code. The present law, whatever its defects, does, however, protect the civil servants as well as the public in many ways, as will appear later.

A law and an ordinance which depart to a considerable extent from the protective principles established by the Constitution, the law of officers, and other legal safeguards for civil servants, must be mentioned here. A "Law concerning the Duties of Officers for the Safety of the Republic,"[3] which

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[2]See *Reichsgesetzblatt* (national law gazette), 1907, p. 245. For amendments to 1925, see de Grais, *Handbuch der Verfassung und Verwaltung*, 1926 edition, p. 41.

[3]See *Reichsgesetzblatt*, 1922, p. 590.

was passed in 1922, inserted into the law of officers provisions that all national officers must support the republican form of government; that they are particularly forbidden to misuse office or the influence of official position in the endeavor to change the form of government, or in any way to bring disrespect upon it, upon the national flag, or upon the cabinet of the Reich or of a state; that the Reich or a state may provide by statute, that in the interests of the security of the republican form of government, certain specified categories of non-judicial officers in directorial positions or positions demanding decisions of policy or involving duties for the safety of the Republic, may at any time be retired temporarily by the highest national or state authorities in charge, with the legal retirement salary guaranteed. As a part of the same law, the last-named provisions were made effective for certain classes of national officers, subject to alterations of this list by the cabinet, in coöperation with a committee of the Reichstag.

In 1923 the cabinet, acting on the basis of a law which gave it very extensive ordinance powers, issued the "Personnel Reorganization Ordinance,"[4] which provided for the retirement of officers at the age of fifty-eight instead of sixty-five, and otherwise departed from the provisions of the Constitution and the law of officers. The object of this law was to reduce the overburdened civil service list. Many persons who took the places of those called to the front during the war had acquired official status while the latter still retained it, and war and post-war conditions had necessitated an unusual number of public employees, so that it was necessary to take some action for reducing the list, despite the principles of life appointment, the inviolability of duly acquired rights, and so on. Most of this ordinance has been repealed, after its chief purpose was accomplished.

Both the law and the ordinance just described were emergency measures, and were not intended to encroach permanently upon the constitutional and legal protections given to civil servants. The dissatisfaction aroused by the latter, in particular, was very great, and there has been a considerable feeling of relief as various portions of it have been abandoned.

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[4] *Reichsgesetzblatt*, 1923, Part I, p. 999.

Qualifications and Appointment

The Constitution makes the appointment and dismissal of all public officers of the Reich a function of the national President, unless other provision is made by law. The President may allow other authorities to exercise this function (Constitution, Article 46). Various legal provisions, decrees, and the developments of custom, have resulted in the following situation: Nominally, the President makes appointments to the higher offices; actually, such appointments are made by the heads of the national departments interested. Power to appoint and dismiss officers of the lower and intermediate salary groups has been formally delegated to the highest national authorities (i. e., the heads of the departments, etc.), with the power of further delegation. In other words, the various departments and other superior national agencies fix the qualifications of education, experience, and the like, for the officers whom they are to appoint; but always subject to the national law of officers, and to the numerous other laws which touch upon such matters—usually by requiring a given office to be filled upon the nomination of the Reichsrat (the national body which represents the states) or with its consent; or by making the same requirement in respect to some professional association; or by providing that persons appointed to given offices shall possess the qualifications for the judicial service or the higher administrative service, that they shall have passed a qualifying examination upon the completion of certain scholastic requirements, and so on.

An important feature of the German civil service—and this is true in all units of government—is the close integration of the civil service requirements with the curricula of the educational institutions of all grades. The national Constitution makes the common schools the basis of the entire educational system. Children who are not to receive a higher education must be given at least eight years of instruction in the common schools, and industrial or continuation courses until they have reached the age of eighteen. This educational equipment makes them eligible to appointment to some positions, and to admission to the qualifying examination for others, in the lower ranks of the civil service. Persons who have received a somewhat more advanced education, in the secondary

or intermediate schools, the ordinary technical schools, the gymnasia, and the other schools of less than university rank, are likewise eligible for appointment, or for qualifying examinations, to positions of intermediate grade. The higher ranks of the civil service are open only to those who have completed the work of a university or of a higher technical school. Many of the highest positions may be held only by those who have qualified for the judicial service or the higher administrative service, which implies usually a law course in a university, a first examination, three years of practical experience and theoretical training in courts, prosecuting attorneys' offices or administrative offices, a thesis, and a severe final examination.

For many positions a probationary period is required. In general, persons who have met all the requirements for the type of service which they are to enter are placed on a waiting list until vacancies arise, when they become probationers or unclassified officers. At the end of a period fixed by law or ordinance for various kinds of positions, they are appointed to the classified civil service, which means, as a rule, that they are well started on a life career.

Much that has been said above applies equally to the states. Though state laws and ordinances naturally vary as to the type and number of examinations or the length of probation necessary for appointment to various positions, all integrate their requirements with the educational system, and approximate the practice of the Reich in other ways.

Management, Promotion, and Discipline

The personal records of officers are kept by their superiors. Entries are made in these records as to all facts affecting the efficiency of the officer, disciplinary measures, promotions, and the like. As has been stated above, the national Constitution requires that each officer shall have access to his personal record.

Promotion within a salary group depends primarily upon length of service. Laws and ordinances sometimes provide, however, that a specified proportion of promotions may be made "by choice," among persons who possess certain qualifications. In other words, the guiding principle for promotion

is seniority, but a certain degree of flexibility is provided to cover cases of particular merit, or the special needs of the service. It is unnecessary to comment upon the possibilities of favoritism that present themselves here, as everywhere that official discretion plays a part. There is relatively little complaint in Germany, however, of abuses of discretion partly, no doubt, because civil service is a life career, not only for the lower officers, but for the higher ones, who cannot afford, for many reasons, to indulge in favoritism to the injury of the service.

The methods of discipline in public service are carefully fixed by the law of officers. Penalties are either "ordinary," that is, admonitions, reprimands, and fines to amounts specified in the law, or removal from office, either by way of disciplinary transfer which may involve decrease of salary, or by actual dismissal with loss of all prerogatives, including pension rights.

Any superior officer may impose the ordinary penalties of admonition and reprimand. The highest national authorities may impose fines to the maximum set by law; the directors and other authorities next in rank, to one-fourth of the maximum; those placed under them, to one-thirtieth of the maximum. These penalties are imposed in writing, after a hearing. A formal complaint or appeal may be made by the officer affected, to the higher authorities, whose decision in the matter is final.

Removal from office takes place only after a formal trial, consisting of a written preliminary investigation and an oral hearing before a "disciplinary chamber." Such chambers are established at various points, to serve given districts. Each chamber consists of seven members. The president and at least two others must have the status of judicial officers, and the remainder must be in the public service. A bench of five, two of whom must have judicial status, decides disciplinary cases. The decision, and the grounds on which it is based, must be published, and communicated to the defendant; a record of all important features of the proceedings must be kept. The defendant may avail himself of the services of a lawyer; the highest national authorities appoint persons who are to carry on the investigation and to act for the public prosecutor.

A national disciplinary court acts on appeals against the decisions of the disciplinary chambers, which may be made by either party. No further appeal or other legal remedy is permitted, but the national President may decrease or remit penalties.

Many other details of discipline are fixed by law, such as the possibility of provisional suspension when grave charges are brought against an officer. Corruption and other abuses in office, or the unauthorized exercise of authority, also subject the officer accused of them to ordinary criminal process.

The public is protected against abuses of official authority by the right to sue before administrative courts for a redress of grievances or a declaration that a given action is illegal, or to bring suit for damages before the ordinary courts. If damages are granted, the state or other body corporate which employs the officer is responsible for their payment. It may in turn seek redress from the officer, but this is unlikely unless the damage has been wilful or due to flagrant misfeasance, malfeasance, or criminal negligence. In any case, the citizen is protected.

Obligations and Restraints

The oath of office taken by the civil servant pledges him to fidelity, to obedience to law, and to the conscientious performance of his official duties. The law of officers requires every civil servant to perform conscientiously the functions of his office in accordance with the Constitution and the laws, and also to conduct himself in both his public and his private capacity in such a way as to merit the respect due to his position.

An officer must acept any unpaid accessory public offices or duties which are bestowed upon him, if these are compatible with his education and experience. The consent of the highest national authorities is required before a national officer may become a member of the board of managers or supervisors of any business corporation. Such consent may not be given if either direct or indirect remuneration attaches to the position in question. The consent may be revoked at any time.

The laws devote a good deal of attention to the matter of official secrecy. The law of officers makes the general requirement that even after an officer may have left the service,

he must keep secret any matters of which he has knowledge by virtue of his office, which require secrecy either because of their nature or because of the orders of a superior. This obligation holds good even when testimony is being given before a court or other inquisitorial authority. An officer may be relieved of the obligation of secrecy under special circumstances, by his present or former superior authorities. If the officer is a member of either the national cabinet or a state cabinet, the consent of that body is required in order to set him free to testify; but such consent may not be refused unless the giving of testimony would be injurious to the welfare of the Reich or of a state. Permission from the higher authorities is required even when an officer is asked to give a (non-judicial) expert opinion.

Strict legal limitations are placed upon the power of public officers to pledge or assign their official incomes.

The most interesting legal question which has arisen under the new Constitution is that of the right of civil servants to "strike." When a railway strike was threatened, the national President issued an emergency ordinance forbidding officers of the national railway and all other officers to suspend or to refuse the duties obligatory upon them. The ordinance was attacked as unconstitutional on various grounds, of which the chief was, that the Constitution guarantees freedom of association. Two decisions of the highest national court of ordinary jurisdiction, the Reichsgericht, upheld the ordinance, and laid down the doctrine that civil servants may not strike. The law of officers, said the court, imposes a special duty of obedience, fidelity, and service, which is different from a mere contractual relationship, as shown by the oath. Civil servants may not strike because this would be contrary to their obligations. The right of association is not the right of coalition. Civil servants may not act in opposition to the will of the people by hindering the fulfillment of public functions in refusing to do their duty; otherwise the public power would become entirely dependent upon the associations of civil servants.[5]

[5]For these decisions in full, see Entscheidungen des Reichsgerichts, Strafsachen 56, pp. 412, 419. For extracts and more extended discussion, see Blachly and Oatman, "German Public Officers and the Right to Strike," *American Political Science Review*, February, 1928.

Salaries and Pensions

The highest officers of the Reich, such as cabinet members and presidents of courts, receive fixed salaries. The majority of regular officers, however, including members of the classified civil service, soldiers or members of the armed forces, and police officers of the national waterguards, begin at a minimum salary and receive regular increases every two years until the maximum for their group has been attained. The present salary classification of the Reich was established by law in December, 1927.[6] Although administrative in nature, and actually prepared by the national ministry of finance, it was enacted by the legislature because it involves both public policy and financial appropriations.

There are twelve salary groups of classified civil servants, the lowest of which includes such positions as stoker, watchman, and postal messenger, with a beginning salary of 1,500 marks and a maximum of 2,100 marks; the highest of which includes the directors of national services such as the patent office and the insurance office, division chiefs in the army or navy, ministerial councillors, and the like, who receive a beginning salary of 8,400 marks and a maximum of 12,600 marks.

The amounts listed in the official salary schedule are called basic salaries; as has been said, they depend upon length of service. The official length of service does not necessarily correspond with the actual period spent in a given group as under some circumstances the service of a state, a commune, or some other public-legal body may be counted as establishing seniority; promotion from one group to another may involve the allowing of seniority in service; or disciplinary demotion may involve loss of seniority. Since regular officers have a legal claim to the salary increases based on their length of service, which the courts will enforce, this is an important matter for which laws and ordinances make many special provisions. Each officer is notified in writing as to the establishment of his length of service; in case of dissatisfaction he may appeal to the higher administrative authorities, whose decision on the point is accepted by the courts when salary claims are involved.

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[6] *Reichsgesetzblatt*, 1927, Part I, pp. 349 ff.

In addition to the basic salary, regular national officers receive a "location allowance" which is intended to equalize the cost of living in various parts of Germany. This allowance is based upon a schedule of localities prepared from time to time by the national Minister of Finance with the consent of the Reichsrat, according to fundamental principles established by the Reichsrat and a committee of the Reichstag or national legislature. When official residences are supplied, they are considered a part of the location allowance.

An allowance, uniform for all officers, is made for each child dependent upon and supported by a civil servant. This allowance ceases when the child is twenty-one years old, and may cease when the child is sixteen, unless it is still receiving an education or is incapable of self-support. Married women officers receive this allowance only when they are actually responsible for the support of the children; that is, when their husbands are incapable of assuming this support without endangering a proper standard of living for the family.

Until very recently, an annual allowance, based on an index number of prices, was made to officers in order that their salaries might keep pace with the changing costs of living; but the present national salary law, passed in December, 1927, does not make such a provision. It does, however, open the way to the possibility of this type of adjustment in case of need, by stating that allowances in addition to those which it specifically grants may be given if they are provided for in the national budget, or if special appropriations are made for this purpose. It also provides that under very exceptional conditions extra pay may be granted for extra work or for additional offices. As a rule, no extra pay may be received by an officer.

The salary provisions for such special classes as soldiers, marines, and waterguards, need not concern us here; but a word is needed as to the salaries of unclassified officers who are serving in a probationary capacity, or who are undergoing preliminary training, as for judicial positions or teaching positions, during periods fixed by law or ordinance, seldom exceeding five years. A schedule of stipends for these unclassified officers accompanies the regular salary schedule. The stipends, which are subject to increases at regular intervals,

are fixed with reference to the salary class which each unclassified officer will enter, so that when he obtains a regular appointment, his beginning salary will be somewhat higher than his highest salary for the preliminary period. Allowances for location and for children, and any other allowances that may be made in addition to the basic salaries of classified officers, are also granted to the unclassified officers.

The pension policy of the Reich is very liberal. Incapacity after ten years of service, incapacity due to the service itself even before ten years, temporary or permanent retirement because of the needs of the service (this does not mean disciplinary dismissal, but, for example, a reduction of the number of positions), or retirement after the age of sixty-five, all entitle the officer to a pension for life. The pension consists of a basic sum fixed according to the salary previously received (usually from 35 per cent to 80 per cent of the salary, according to length of service), and a location allowance; grants for dependent children may also be made. In case of the death of a civil servant, the widow (in case of need, such as invalidism, the widower) and the surviving dependent children will receive pensions. The pensions are paid from the national treasury; the officer does not insure himself or contribute in any way to a pension fund; although he may, if he wishes, provide for further income by joining a sort of annuity association for civil servants which is recognized and supervised by the Reich.

It has long been the Germany policy to pay civil servants so liberally as to attract the best talent. The salaries in each group, while never equal to the most flattering inducements that private business could offer at best, have been notably higher than the average income of the social and occupational class from which the various grades of officers have been drawn. It has been the definite purpose of the Reich—and indeed of all units of government—to enable every civil servant to maintain a high standard of living according to his class. The misfortunes of war, and the rising costs of living, have meant that salaries, though increased, have been unable to answer this purpose, so that civil service is now relatively less attractive financially than it was before the war. Steps are being taken to remedy this situation. How seriously the Reich

is committed to a liberal salary policy, may be judged from the following statement by the national Minister of Finance:[7]

> The *salary reform* undoubtedly demands not inconsiderable funds; these, however, are considerably smaller than is assumed by the public. . . . It is impossible to answer the question of increasing all these payments in the affirmative or negative solely from the standpoint of financial policy. On the contrary, this is one of the questions in the decision of which quite different standpoints must have a part. . . . [The officials] are the persons on whom the State has to rely in the execution of its will and whose attitude toward it and its existence is of the greatest importance in relation to the spirit of the nation as a whole. All business elements also agree with the Government that there can be no more serious impediment to the work of reconstruction than the decline of German officialdom, renowned for its devotion to duty and its integrity, into a state of unreliability. Germany has every reason to maintain the great asset of her officialdom.

Lest the American reader, translating marks into dollars, should doubt the liberality of the German salary schedule, it is necessary to compare it with the wages of unskilled and skilled labor in Germany. According to the *Jahrbücher für Nationalökonomie und Statistik* of July, 1928, the weekly wages of unskilled labor in Germany for the months of March, April, and May of 1928 averaged 37.8 marks; the weekly wages of skilled labor for the same period averaged 50.1 marks. If all classes of labor were assured of 50 weeks of employment each year—a very high estimate—the average annual income of unskilled laborers at this rate would be 1,890 marks, and that of skilled laborers, 2,505 marks.

It will be seen that even the humblest position in the civil service, starting at 1,500 marks, is more attractive than unskilled labor, since it offers a secure income, life tenure, an allowance to meet the extra cost of living in a city, an allowance for every dependent child, an old age pension, and regular increases to an income notably beyond that of unskilled labor.

Mechanics and persons who fill various clerical positions find equal advantages in the civil service, as compared with skilled labor. Topographers, secretaries of consulates, and

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[7] Extract from memorandum sent by the Finance Minister of the Reich to the Agent General for Reparations Payments, November 5, 1927; published in Official Documents of Reparations Commission, No. XVII.

the like, start at an income above that of skilled labor, and end at twice the income of skilled labor; tax councillors receive more than three times, higher governmental councillors nearly four times, and directors of national services more than five times, the income of a skilled laborer working fifty weeks a year—in addition, it must be remembered, to other allowances, life tenure, and the prospect of an ample pension.

Advantages and Inducements

We have already seen some of the very important advantages which induce persons to enter the civil service in Germany, such as life appointment unless the law specifies otherwise, a liberal salary and pension system designed to relieve the officer of economic worry so that he can devote his best powers to the service, the right to salary increases based on length of service, access to personal records with the right to be heard before unfavorable facts are entered upon them, and the right to a formal trial by a specially qualified tribunal, with the possibility of protest and rehearing by a national disciplinary court, before suspension or dismissal.

In addition to these advantages and the others guaranteed by the Constitution, there are yet others, less tangible, but not to be overlooked. Thus, both law and custom combine to make public service a career of honor, and often of great distinction. Because of the similar educational background possessed by persons entering the various ranks of the service, transfers and promotions are possible not only within the salary class which a young person may enter, but—except for special technical services—from class to class until an able and conscientious officer may reach the highest grade within his rank (lower, middle, or higher). This is of particular significance in the higher ranks of the service, where the best abilities are needed. Here the advantages of social prestige, public esteem, the opportunity to rise by merit to the highest positions in the service, combined with a salary which makes possible a comfortable standard of living, together are sufficient to attract into the service a much abler type of person than could possibly be secured otherwise.

Among various minor inducements may be mentioned the fact that each civil servant has an official title, that many

have uniforms, and that the laws protect public officers against insult in the exercise of their functions or in respect to their offices.

Summary and Comparison

In comparing the civil service system of Germany with that of the United States, numerous interesting points of contrast present themselves. The first and perhaps the most striking is the fact that the German national Constitution itself establishes certain basic principles for the status of civil servants, which apply to all units of government, and that it bestows upon the Reich the power of further legislation to establish principles which shall likewise be of general application. Neither the constitutional recognition and guarantee of the rights of civil servants, nor the central establishment of standards to which all units of government must conform, is a part of our own system, nor could they be introduced without radical amendments to our Constitution.

The foregoing should not be interpreted as meaning that the Reich dictates the entire personnel policy of all the governmental subdivisions. The states are free to set their own standards within the limits established by the Constitution and the national laws. Each state does in fact establish its own requirements for admission to the various ranks of its civil service, and there are considerable differences in these requirements from state to state. Nevertheless it must be recognized that the resemblances far outweigh the differences, since the states are operating their personnel administration within a framework of general principles, and on the basis of an educational system, both of which are centrally established.

Another most interesting feature of the German system is the wide scope of the civil service. Misleading comparisons are sometimes made concerning the respective lengths of the civil service lists in Germany and in the United States, by persons who fail to realize that many classes of public servants are enrolled on such lists there, who are omitted here although paid from the public treasury. Thus, guards and watchmen, public school teachers, university professors, and numerous other persons in the employment of a municipality,

a county, a state, or the Reich, have the status of civil servants in Germany. For certain purposes even the high elective and political officers are considered as possessing this status.

The close correspondence between the educational system and the requirements of the German civil service is noteworthy. The various types of schools furnish the basic education for the three grades of civil service which are universally recognized, the lower, the intermediate, and the higher. On this basis there are numerous variations, of course, according to the type of position to be filled. Simple certificate of graduation opens the way to certain positions; others presuppose examination, technical experience or apprenticeship, and so on; but practically all requirements for all positions, from lowest to highest, assume a definite type of general educational background. In other words, it is not sufficient for the applicant for a clerical position to pass examinations in writing, spelling, arithmetic, and the like. He must also have a certain basic education. The advantages of this requirement are obvious. Transfers and promotions within the service, and from the service of one unit of government to another, are facilitated. Special examinations for every change in position are rendered unnecessary, since the applicant's educational qualifications are already established. The officer may hope for transfer to a position of the same general class, but more interesting and advantageous, upon the basis of service. A far broader view of the duties of office is taken, and can be required, when the incumbent has a well-rounded education with reference to his class of work. Promotions do not depend upon a series of examinations, preparation for which, and worry over which, continually distract the officer's mind from his functions; but upon length of service and record.

There is a negative side to this matter, which is quite as important as the positive side. The three ranks of the civil service are so sharply divided, and the requirements for admission are so strict, that it is impossible, except under the most unusual conditions, for a person who enters one rank to rise into a higher one. Ambition must be satisfied with the possibilities of promotion within the given rank. Disappointing as this may be to the ambitious individual, it has

the very great advantage of guaranteeing that the persons in each rank are not mere narrow specialists who have climbed step by step by passing successive examinations in a highly specialized field, without reference to the larger aspects of the public service, but persons of a relatively broad background. This means that throughout the service, such informed intelligence can be brought to bear upon the work in hand, as is of enormous advantage everywhere, but particularly in the higher rank. Under the present educational system, with its serious endeavors to provide scholastic facilities for all, equal to their talents, there is less reason than there formerly was, to consider the higher rank of the service a class privilege, and more reason to consider it a field for talent and industry.

The relative absence of purely political appointments in the German civil service is noteworthy. The higher administrative service in both Reich and states includes practically every high position in the government, below the cabinet; and this service is manned throughout by a personnel which has met the severe entrance requirements, and has made public service a life career. Able and ambitious persons who enter the upper rank of the public service may expect to rise to the very highest positions short of the cabinet, in and through the service itself; and the service receives the benefit of their labors throughout their best and ripest years. Even when appointments to special positions are placed within the choice of ministers, the law which deals with them almost invariably provides that the persons selected shall possess certain qualifications; as a rule, qualifications for the higher administrative or the judicial service. Appointments of the unqualified, for political reasons, are thus rendered difficult.

The principle of life tenure is very important indeed. It means that regardless of party changes and political upheavals, the civil servant in Germany is secure in a life career unless his own misconduct should destroy it. The temptation to use the public service as a stepping-stone, or, still worse, as a means of learning the details of public business which can be employed later for the benefit of private interests, is greatly lessened when counterbalanced by the prospect of a life career in the service.

The German salary policy and pension policy are further attractions to career men. They are designed to guarantee to the public servant and his dependants a comfortable living, which, together with the security, the prestige, and the opportunities for distinction which the service offers, will be sufficient to bring the highest type of talent into the service.

The careful provisions for the discipline of public officers are designed to protect them against arbitrary punishment, and yet to protect the service and the public in case of actual misconduct or abuses of power. Trial by the sectional "disciplinary chambers," and the right of appeal to the national disciplinary court, are designed to secure justice to the officer and to all others concerned.

A most interesting point of difference between the German system and our own is the matter of political activity. It is generally considered in the United States that civil servants should take no active part in political life, and above all should hold no political office. In Germany, exactly the opposite view prevails. The civil servant is not only given a constitutional guarantee of political freedom, but every encouragement is given him to take an active part in political life, even including membership in a state or national legislature. He is, of course, not ordinarily permitted to draw salary for more than one public office at a time. The Constitution provides that he is the servant of the public as a whole, rather than a party; yet participation in party activities is allowed, and even assumed, by the provision that leave of absence is to be granted when a civil servant is a candidate for membership in a legislature. The German view is that the public service should not curtail the civil rights of those engaged in it; futher, that those qualified, trained and experienced in public business are exactly the persons whose influence upon the determination of public policy should be encouraged.

In conclusion, it may be well to ask whether the German system is successful in attracting an able personnel, in keeping them, and in achieving through their activities the efficient accomplishment of governmental work. The testimony of all who have studied the system and observed it in operation is, that the system does succed to a very great degree in

doing all these things. Various factors outside the system should be given due weight—such as the aristocratic tradition and the contempt for business which prevailed until very recently, and the economic situation which made private enterprise somewhat less attractive than in the United States —but there is no doubt that the German method of attacking the personnel problem has many points of universal value, and that it is very well adapted to the ends which it is designed to achieve.

INTERNATIONAL LABOR RELATIONS OF FEDERAL GOVERNENTS

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The International Labor Organization is an international association founded upon a developing section of the law of nations, the international law of labor, and embodied in a widely and generally accepted treaty, the Treaty of Versailles. Demands for the international protection of labor resulted in a special commission being appointed by the Peace Conference of Paris in 1919 to formulate a program to attain this end. The results of the work of the commission are set forth in Part XIII of the Treaty of Versailles. This section provides that the Organization shall be composed of all Members of the League of Nations, and that the work of the Organization shall be carried on by an annual Conference composed of representatives of the Members (two government, one workers' and one employers' delegates), a Governing Body composed of representatives of governments, workers and employers, and an International Labor Office to carry on the research and informational work of the Organization. The Organization has been functioning since 1919.

The Organization has certain powers, and those members of the Family of Nations who become members assume certain obligations. These obligations are quite limited in character. They include the obligation to participate in the deliberations of the Conference, to receive officially the communications of the International Labor Office, to submit to a competent authority the decisions of the Conference (conventions or recommendations), to render annual reports, and perhaps to engage in the application of sanctions against defaulting members of the Organization. The obligations are those of participation and not of acceptance of the decisions of the International Labor Conference.

The supreme importance of the issue of federalism in relation to the formation of the International Labor Organization has not been generally realized. The rock upon which the commission almost split was that of federalism, and the representatives of the United States, Henry M. Robinson and

Samuel Gompers, were the ones who raised, stressed, and defended the needs of federalism against the majority opinion expressed in the commission. Most of the changes in the structure of the Organization away from the proposals of the British delegates were made in the interests of the American representatives, who stated what they conceived to be the essential needs of the United States as the outstanding federal government in international labor coöperation. Because the United States has not become a member of the Organization, interest in the issue of federalism in labor coöperation has died down; the provisions inserted for the benefit of the United States have been used for greater flexibility in international labor legislation; and the bitter debates of the Peace Conference Commission now have only an historical interest, though a vital one. The question that should be answered is: Did the American representatives correctly represent the needs of the United States? Were their statements as to the possible legal relations of the United States with the Organization the final words on this problem? This is the task which is here set before us.

Of course, the Treaty of Peace makes it possible for the United States to coöperate with the Labor Organization. Article 405 of the Treaty makes special provision for federal governments in allowing them to treat the conventions of the International Labor Conference as recommendations when the treaty-power of the government is unable to act in the same way as unitary governments, the type of government most commonly represented in the Organization. Public opinion, however, and not legal difficulties have prevented the United States from engaging in the efforts of other countries to raise the international standard in the treatment of labor. There is one question which comes now as a secondary consideration, but which might be primary if the United States should become a member of the International Labor Organization. If Robinson and Gompers should be wrong in their analysis of legal difficulties facing federal governments such as the United States, the actual coöperation of the United States with the Labor Organization, public opinion acceding, might be very different from that contemplated in the Treaty of Peace, Article 405; it might be on practically the same basis as a unitary

government if the treaty-power of the United States government is not limited by the police power of the states in the American Union. Therefore, the investigation, historical as it is, of the claims of the American representatives in the Peace Conference, may be of the utmost importance in the future. Likewise in the future, the practice of federal governments actually members of the Organization during the last few years may also be of significance.

The American delegates on the Labor Commission made repeated objections to the establishment of a miniature world-state in the form of an international labor organization. American federalism was set forth as the great objection to a developed international organization and administration in labor relations. The objections of representatives of other federal governments were concerned largely with the question of State sovereignty rather than with the specific problems of federal governments. To the time of the Peace Conference federalism had not been considered an obstacle to international coöperation. International coöperation is in essence but the extension on an international scale of the principles of federalism. One of the advantages of federalism was deemed to be the centralized control of foreign relations with a decentralization of the control of local affairs. But it was just this decentralization of the control of presumed local affairs which caused trouble in the Peace Conference. To state it differently, international relations have been expanding, and it was only with the expansion of the concept of international coöperation that federalism from the American viewpoint became opposed to this development. During the earlier years of international labor legislation as exemplified in the Berne Conferences it was the policy of isolation rather than our federal structure which prevented the United States from fostering the international labor movement.[1]

The position of the American delegates in the Peace Conference should be examined to determine whether or not they correctly interpreted the constitutional situation in the United

[1]Andrews, J. B.: "International Protection of Labor," *American Labor Legislation Review*, IX (1919), pp. 17–18, contends that individualism was more of an objection to American support of the labor movement than was federalism. *Cf. National Industrial Conference Board*, Research Report No. 48, April, 1922, pp. 143–45.

States. Aside from the question of public opinion supporting American participation, the constitutional problems are most important. It is the writer's belief that the American delegates asserted, as constitutional objections to our participation, a body of states' rights doctrine which had been virtually discarded since the Civil War. In fact, it may be said that in some ways Robinson and Gompers went even further than John C. Calhoun in their defence of the rights of the states. We shall devote our immediate attention to the third paragraph of Article XVIII of the original British proposal before the Paris Commission.

> Each of the High Contracting Parties undertakes that it will within the period of one year from the end of the meeting of the Conference communicate its formal ratification of the convention to the Director, and will forthwith take all steps necessary to put the convention into operation, unless such convention is disapproved by its legislature.[2]

This paragraph caused trouble. Under it the United States would have been bound to follow out the provisions of the various conventions unless they were formally rejected. It is needless to call attention to the fact that the Constitution of the United States provides for the ratification of treaties by and with the advice and consent of the Senate following negotiation by proper authorities. We might have been bound under the proposed article without the constitutional procedure of ratification having been followed through if the Senate failed to reject a convention. But the British scheme would have had no less important results for other countries, since in many European States practice was dictating that treaties should be submitted to legislative bodies for approval. It might have meant that for England the normal course of constitutional development would have been altered. But it must be admitted that the flexible, unwritten constitution of Great Britain would have withstood the strain more easily than the rigid, written constitution of the United States.

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[2]See *Official Bulletin of the International Labor Office*, I (1923), p. 13. See *ibid., passim*, for documentary data on the work of the Commission on International Labor Legislation of the Peace Conference.

Robinson argued, on February 20, 1919, that no international convention could be binding on the United States without previous reference to the United States Senate. In this he was supported by James Brown Scott of the American Institute of International Law. But Robinson argued also that legislative power was vested in Congress, and that no convention could bind that body to take legislative action. He did not stress at this time the federal character of the United States government, and it is an interesting question whether he had this argument in mind at the time.[3] Gompers introduced the question of the reserved powers of the states, but his original argument did not seem to be connected necessarily with the treaty-power of the United States.[4]

The American contentions developed rapidly, and on February 28 they were presented in full and summarized by Robinson. His summary was as follows:

> The objections to the third paragraph of Article XVIII are four in number:
>
> (1) The Senate has the constitutional power and duty to advise and consent to treaties. To allow a foreign body to make a treaty to bind the United States would be, in effect, a delegation of the treaty-making power to the extent of the provisions of the treaty.
>
> (2) The Congress of the United States is the Legislative Body of the United States in such matters as have been delegated to it by the States of the Union. And, it is generally understood that the Police Power, as such, is not among the powers granted to the Union, but among those reserved to the States. Legislation required to give effect to a treaty would need to be passed by the Congress as a whole, and it is for the Congress to determine, notwithstanding the terms of the treaty, whether it will or will not pass such legislation. Furthermore, the Congress of the United States cannot be bound in advance to pass such legislation, either affirmatively or negatively.
>
> (3) In regard to the reserved powers, including therein the so-called Police Powers, the States retain the right of legislating for their citizens. Neither the executive nor the legislative branch of the Federal Government can give any assurance that any legislative action will be taken in any of the States.
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> (4) In ultimate resort the constitutionality of a treaty or of an act of Congress may be tested in the Supreme Court of the United States. The legislation passed by a State Legislature may be tested in the State Courts and in the Supreme Court of the United States.

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[3] *Official Bulletin*, I, 57.

[4] *Ibid.*, p. 58.

The legislation of Congress may be declared unconstitutional by the federal judiciary, and that of the States by the State judiciary or the federal judiciary.[5]

We have already considered the terms of the Treaty of Versailles (Article 405) which represent the final compromise reached by the commission and accepted by the Peace Conference. These provisions are a solution because they eliminate, as far as federal governments are concerned, the question of the treaty-power. The United States may participate and do what it wants to, and has, as was frequently noted in the commisison and before the plenary session of the Peace Conference, less of an obligation than other States which are members of the Organization. Certainly no difficulty exists at the present time which would prevent the United States from participating in a qualified way in the work of the International Labor Organization should a change in the currents of public opinion make this desirable. The United States would be free from making annual reports since we would consider most conventions as recommendations. The American delegates accepted the sanction provisions with reluctance, but a careful reading of the treaty will show that the United States could not be compelled to undertake measures against a defaulting member. If the United States neither ratified conventions nor accepted compulsory jurisdiction under the Permanent Court, there would be no chance of being brought before the Court. The Peace Conference was uniformly agreed upon the idea that sanctions as provided in the Labor Section of the Treaty should be used only as a last resort. In any case, if the United States lived up to her obligations, which would be light under the Treaty, there would be no action against her. Moreover, the penalty provisions apply against States which have ratified conventions. Recommendations come under the application of sanctions only when a member has not taken the required action under Article 405 of the Treaty.

Given the situation in which Robinson advanced his arguments, to what extent were they valid? It will be admitted that the first argument regarding the delegation of the treaty-making power is correct, but it would also be correct of many other members of the International Labor Organization. Since

[5] *Ibid.*, pp. 86–88.

we have a regular procedure for the ratification of a treaty, a treaty is not binding unless ratified in the constitutional manner. The fourth argument regarding the testing of constitutionality is weak. If the Supreme Court should declare that the object aimed at was beyond the treaty-power, a treaty incorporating such an end could not be validly ratified since the United States would not have the power to ratify the treaty in the first place. The question of judicial review seems incidental rather than important in the relation of federalism to international labor legislation. If the treaty-power may cover a given object it is quite beyond the range of possibility that legislation by Congress carrying out the terms of the treaty would be declared unconstitutional. It is to be implied in the general power to make treaties that they may be carried out by legal means.[6] The second and third arguments advanced by Robinson in regard to effecting legislation and the reserved powers overlap. It is true that Congress does not have to pass legislation to carry out a treaty, but as a matter of fact Congress has never refused. No matter what phase of the treaty-power is involved, if legislation is needed to carry out the treaty, Congress may refuse to pass it. Labor legislation would be no worse off than any other phase of international relations where positive enactment is needed to carry out treaties. It is true, of course, that neither the executive nor legislative branches of the national government can make any promises for the several states as to the passage of social legislation.

Let us assume that the original British Plan has stood with the exception of an amendment to paragraph three of Article XVIII which would provide that after the submission of the draft convention to the competent authority or authorities no obligation would remain on the member State. The treaty-power of the United States would be exercised either in ratification or in the refusal to ratify a given convention. What would have been the fundamental questions for the United States to consider? Robinson argued that the power to pass labor legislation generally is included in the police power of the several states, and, therefore, the national government is incapable, without a constitutional amendment, of ratifying

[6]Corwin, E. S. *National Supremacy* (New York, 1913), p. 165.

treaties obliging us to insure certain protections to labor. This is the fundamental question to be answered before it can be asserted that the United States can participate fully in the development of the international law of labor. Does the police power of the states act as a restriction on the treaty-making power of the national government? Robinson and Gompers answer that it does. Yet the argument in favor of national supremacy when the treaty-power is concerned is to be traced back to the decisions of Marshall. One of the important decisions in the opposing line of argument was rendered to the year just a century before Robinson and Gompers were making their stand in the Commission on International Labor Legislation. If the treaty-power of the United States national government is extensive enough to cover the social legislation of the states, the way is cleared for a full participation of the United States in the International Labor Organization including the ratification of draft conventions adopted by the International Labor Conference.

The government of the United States has a dual character. The national government exercises those powers which are given it in the Constitution and the states are left all other powers not prohibited to them by that instrument. Though this division of power is clear for many purposes, there are many matters of conflict. One of the powers given the national government is the power to make treaties. In the nature of the case, there must be some limitations on the treaty-power, but the question here to be considered is whether or not the police power of the states acts as a limitation upon the treaty-power of the national government. It is obvious that the provisions of the Constitution describing how treaties shall be drawn up are a limitation of a formal character. It is clear also that the treaty-power may not be used to alter the character of the Union or to modify the source of its own power. Moreover, the bill of rights in the Constitution has generally been admitted to operate as a limitation on the treaty-power. This was particularly brought out in the Insular Decisions.[7]

The great restriction on the treaty-power is that it must be used on subjects proper for international negotiation. It

[7] *Hawaii* v. *Mankichi*, 190 U.S. 197.

must be used with good faith at all times, but it must also be admitted that the United States as a sovereign State has equal power with other members of the Family of Nations to enter into negotiations in the ordinary course of its foreign relations. As a general position it may be said that the reserved powers of the states may never be used with propriety to indicate a restriction on delegated powers of the national government.[8]

Early decisions of the United States Supreme Court established the rule that when the national government has a power, that power transcends state power if the two come into conflict. A number of famous cases brought this principle.[9] In *Gibbons* v. *Ogden*,[10] Marshall argued

> That if a law passed by a state, in the exercise of its acknowledged sovereignty, comes into conflict with a law passed by Congress in pursuance of the Constitution, they affect the subject, and each other, like equal and opposing powers. But the framers of our Constitution foresaw this state of things, and provided for it, by declaring the supremacy not only of itself, but of the laws made in pursuance of it. The nullity of any act inconsistent with the Constitution, is produced by the declaration, that the Constitution is the supreme law. . . . In every such case, the act of Congress, or the treaty, is supreme; and the laws of the state, though enacted in the exercise of powers not controverted, must yield to it.

If we take the above argument at its face value it is obvious that the treaty-power, unexceptionable except for a state power or law, will prevail over that power or law no matter by what uncontroverted right a state law may have been passed. It is also clear that when there is a conflict between the delegated powers of the national government and the reserved powers of the states the supreme law clause governs the situation. A leading precedent covering the issues arising from a conflict of treaty provisions with state legislation is the case of *Ware* v. *Hylton*, decided by the Supreme Court in 1796.[11] Here the treaty-power nullified a law of the State of Virginia regulating the payment of debts due British subjects. A similar view was expressed by Madison and others in the Virginia ratifying convention. He would not state the objects

[8] Corwin, *op. cit.*, pp. 1–19.

[9] See *McCulloch* v. *Maryland*, 4 Wheaton 315 (1819); *Cohens* v. *Virginia*, 6 Wheaton 264 (1821); *Gibbons* v. *Ogden*, 9 Wheaton 1 (1824).

[10] 9 Wheaton 209.

[11] 3 Dallas 199.

to which the treaty-power would apply, but insisted upon political checks found in the Constitution, particularly impeachment of the President, for the reasonable exercise of the power. Yet he did not believe that the power was unlimited. Madison and his supporters argued that the exercise of the power must be consistent with the object of the delegation.[12]

Corwin argues that with the development of the states' rights theory a new conception of the treaty-power arose. One view held that the treaty-power could be used to carry into effect those powers delegated to the national government. A second view expressed by Jefferson in *A Manual of Parliamentary Practice*,[13] is that the power extends only to those ends usually regulated by treaty, and that the rights of the states must be excepted from this power. Yet Jefferson himself had been a champion of the treaty-power under the Articles of Confederation. Another view, holding that states have certain inalienable rights which they have never given up to any political authority, naturally looks to secession as the logical outcome of the assumption of those powers by the national government.[14]

The general confusion on the relation of the power of the states to the national treaty-power just before the Civil War must be attributed to the growth of states' rights philosophy. But even if we suppose the states did have the treaty-power originally, to adopt for a moment the states' rights view, and

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[12]Corwin, *op. cit.*, p. 70. See Elliot, Jonathan: *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* (Philadelphia, 1891), III, 499–516, for the debate on the treaty-power in the Virginia Convention.

[13]1854 edition, p. 110.

[14]For a discussion of the actual encroachment on the rights of the states by the national treaty-power in such matters as the cession of territory belonging to the states, giving rights to consuls in the territory of the states, the right to travel to foreigners, etc., see Corwin, *op cit.*, pp. 129 ff.

The French Consular Convention of 1853 gives weight to the states' rights contention since the privileges granted by treaty were made dependent on the action of the states. In the *Passenger Cases*, 7 Howard 283 (1849), Taney had for the first time the chance to save the general doctrine of the reserved rights of the states as an unmistakable limitation on the treaty-power. After the *Passenger Cases* the Supreme Court stood ready if necessary to vindicate the police power of the states against the national treaty-power.

it was given to the national government, as the terms of the Constitution would clearly indicate, they would not have reserved rights against the treaty-power after it was given over to the national government. Even Calhoun did not make of the reserved powers of the states a limitation on the treaty-power of the national government. As he observes in the *Discourse on the Constitution and Government of the United States,*

> It is, in the first place, strictly limited to questions *inter alios*, that is, to questions between the United States and foreign powers which require negotiations to adjust them. All such clearly appertain to it. . . . It is, in the next place, limited by all the provisions of the Constitution which inhibit certain acts. . . . It is also limited by such provisions as direct acts to be done in a particular way. . . . It can enter into no stipulation calculated to change the character of the government or to do that which can only be done by the Constitution making power; or which is inconsistent with the nature and structure of the government, or the objects for which it was formed. Among which it seems to be settled that it cannot change or alter the boundary of a state or cede any portion of its territory without its consent. Within these limits all questions which may arise between us and other powers, be the subject-matter what it may, fall within the limits of the treaty-making power and may be adjusted by it.[15]

If one may assume that Calhoun would admit that today the international relations of labor are a proper subject for international negotiation, then the American delegates at the Peace Conference were arguing for a position not only not maintained by the states' rights philosophy, but also rejected by the precedents established by Marshall and Story. In any case, it may be said that the efforts of the Supreme Court after the Civil War were to preserve the landmarks and the older equilibrium between the national government and the states.[16]

A great variety of decisions might be cited to show the gradual return of the Supreme Court to the doctrines of Marshall after the Civil War. Only a few outstanding cases may be mentioned. In *Baker* v. *Portland,*[17] it was decided in 1879,

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[15]Pp. 202–204.

[16]Corwin, *op. cit.*, p. 166.

[17]5 Sawyer 566.

that the right of a state to say who should be allowed to work on public works in the state was restricted by the implied meaning of a treaty. If persons are legally in the United States they have a right to "live and labor for a living." Corwin believes that this decision is conclusive on the relation of the state power to the treaty-power of the national government. He calls attention to the words of the court that "admit the wedge of state interference ever so little, and there is nothing left to prevent its being driven home and destroying the treaty and over-riding the treaty-making power altogether."[18] It is logical to conclude that the powers of the states do not constitute a limitation on the treaty-power of the national government. What limitations there are must be sought elsewhere. In *Geofroy* v. *Riggs*,[19] decided in 1890, Justice Field declared

> That the treaty-power of the United States extends to all proper subjects of negotiation between our government and the governments of other nations, is clear. . . . The treaty-power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or of its departments, and those arising from the nature of the government itself and that of the states. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the government or in that of one of the states, or a cession of any portion of the territory of the latter without its consent. But with these exceptions, it is not perceived that there is any limit to the questions which can be adjusted touching any matter which is properly the subject of negotiation with a foreign country.[20]

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[18]Corwin, *op. cit.*, pp. 178–79.

[19]133 U.S. 258, 266.

[20]Referring to the decisions of state courts, Corwin observes that the importance of these decisions consists, not in the fact that they enlarge the reach of the treaty power, for they only add sanction to provisions of a type that have appeared in treaties from the beginning of our national history, but it consists in the fact that, considering their source, they warrant the greatest assurance that the doctrine of reserved powers available to the states in certain contingencies as against the treaty-power has been finally and conclusively shelved. At least with that doctrine considered unavailable by state judiciaries to protect their own jurisdiction from invasion by treaty, we are warranted in feeling that it has lost most of its potency. *Op. cit.*, pp. 194–95. *Cf.* Crandall, S. B.: *Treaties, Their Making and Enforcement*, 2nd ed. (Washington, D. C., 1916), pp. 263–65.

In line with the general tendency indicated above, the words of Elihu Root before the American Society of International Law in 1907, are significant.

> It is, of course, conceivable that under the pretense of exercising the treaty-making power, the president and senate might attempt to make provisions regarding matters which are not proper subjects of international agreement, and which would be only a colorable—not a real—exercise of the treaty-making power; but so far as the real exercise of the power goes, there can be no question of state rights, because the Constitution itself, in the most explicit terms, has precluded the existence of such a question.[21]

It is hardly conceivable that Root would contend that the determination of what is a real exercise of the treaty-power is a judicial rather than a political question. Opinion in the United States alone cannot determine what is proper for international negotiation unless opinion in other countries agrees that such is the case. The question may be stated differently. Is the determination of what is a proper subject of negotiation a matter for domestic determination or is it a matter which the international life of the Family of Nations regulates? If the question is a political question at all it must finally be determined by international developments. In other words, if the Family of Nations thinks that labor is a proper subject of negotiations, then it *is* a proper subject of negotiations. The mere existence of the International Labor Organization is striking proof of what the leading members of the Family of Nations believe as to labor relations as a proper subject of negotiation.

Another question of no little moment is the extent of the authority of the United States in enforcing treaties validly entered into. In general, it might be said, considering the earliest penal legislation passed by the United States government in 1790, that Congress has the power of enforcement under the necessary and proper clause of the Constitution.

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[21]Root, Elihu: "The Real Question under the Japanese Treaty and the San Francisco School Board Resolution," *American Journal of International Law*, I (1907), pp. 278–79.

Representative statements of the Supreme Court on this question are found in *Tennessee* v. *Davis*,[22] and in *Neeley* v. *Henkel*.[23] In the former case the Court said:

> The United States is a government with authority extending over the whole territory of the Union, acting upon the states and upon the people of the states. While it is limited in the number of its powers, so far as its sovereignty extends it is supreme. No state government can exclude it from the exercise of any authority conferred upon it by the Constitution, obstruct its authorized officers against its will, or withhold from it, for a moment, the cognizance of any subject which that instruments has committed to it.[24]

And in the second case it was stated that

> The power of Congress to make all laws necessary and proper for carrying into execution as well the powers enumerated in Section 8 of Article I of the Constitution, as all others vested in the Government of the United States, or in any Department or the officers thereof, includes the power to enact such legislation as is appropriate to give efficacy to any stipulations which it is competent for the President by and with the advice and consent of the Senate to insert in a treaty with a foreign power.[25]

It is a proper conclusion, therefore, that no distinction has ever been established which would differentiate the power of Congress to enforce treaties by means of passing laws from the right to secure the enforcement of the ordinary laws of Congress by means of penal legislation. It becomes evident that the treaty-power extends beyond the legislative power of Congress. Can Congress pass penal legislation concerning matters over which it does not have ordinary power? The answer is in the affirmative. Summing up his general position, Corwin says:

> Judicial utterances asserting the doctrine that the reserved rights of the states set a constitutional bar to the treaty-power of the United States are confined, with the exception of one or two circuit decisions interpreting Indian treaties, to *obiter dicta*, ordinarily of a very gratuitous sort. The reserved rights of the states have never received vindication in a single decision of the Supreme Court of the United States pronouncing a treaty of the United

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[22] 100 U.S. 257 (1879).
[23] 180 U.S. 109 (1901).
[24] 100 U.S. 263.
[25] 180 U.S. 121.

States unconstitutional because of its operation within the field of power which ordinarily belongs to the states.[26]

There is only a small body of literature on the subject of the legal relations of the United States with the International Labor Organization. There is, however, a considerable body of writing on the actual coöperation of the United States with the League of Nations and the organizations grouped around it. The *Report of the Director* of the International Labor Office to the Conference each year has a lucid account of the various phases of the coöperation both public and private between the United States and the Organization. This phase of coöperation is not our main concern. There are several reasons for scarcity of writing on what might be the legal relations between the United States and the Labor Organization. In the first place, the insistence of Robinson and Gompers for special treatment of the United States gave us an unusual freedom from obligation. The United States would have no legal difficulties now if she should desire to join the nations in fostering the international labor movement. Article 405 of the Treaty gives sufficient guarantee of that. The burden of this paper is to prove that we might adhere to the conventions adopted by the Conference without considering them as recommendations if public opinion in the United States should demand it. A second reason for this lack of material is the fact that the League of Nations and other political sections of the Treaty occupied most of the attention of the public when the Treaty was being debated in 1919-1920.[27]

However, those favoring an active and fuller participation of the United States in the work of the International Labor Organization did investigate and come to the conclusions already stated in this paper. Major Thomas I. Parkinson, Director of the Legislative Drafting Department, Columbia University, made a special study of the relation of the treaty-power to international labor conventions. He concluded that

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[26]Corwin, *op. cit.*, pp. 290 ff., 300.

[27]For a good discussion of the collaboration of the United States with the Labor Organization in the future, see Magnusson, Leifur: "The International Labor Office and Possibilities for American Collaboration," Proceedings of the Twelfth Annual Convention of the Association of Governmental Labor Officials . . . 1925, *Bulletin of the United States Bureau of Labor Statistics*, No. 411, May, 1926, pp. 113–21.

it was quite within the range of constitutionality for the United States government to adopt such conventions. As before indicated, the chief question is whether or not the matter can be considered a fit and necessary subject for international settlement.

> My own opinion [said Parkinson] is that a treaty entered into by the President and Senate for the purpose of settling a matter which has been the subject of negotiation with another nation becomes the supreme law of the land, notwithstanding that it deals with a matter of local concern. Such a provision, reasonably resorted to as a means of settling an international question, is binding upon both the federal and state governments. . . . It will probably be held, as in the child labor case, that the federal power cannot be used by . . . indirection to accomplish an unjustifiable interference with the reserved powers of the states.[28]

The factor of public opinion is of the utmost importance in the legal relations between the United States and the International Labor Organization, since the question of whether or not labor questions are suitable for international negotiation must, in part, be decided by American opinion as a political question.[29] It is obvious that the political check on the treaty-power is highly sensitive to changes in public attitude, and it is here that the theory of international competition as the basis of international labor legislation is of great value. Mere humanitarian motives would hardly move the lethargic American public to the revolution in sentiment needed to bring about full participation in the work of the Organization. As Chamberlain says:

> The negotiations of Paris culminating in the labor clauses of the Covenant are the latest evidence of the opinion of diplomats; the permanent labor organization included in the Treaty testifies to the importance which labor treaties are about to assume in the international social order and prove that in fact international settlement of labor questions is a 'subject of negotiations' between nations.[30]

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[28]Parkinson, T. I.: "Constitutionality of Treaty Provisions Affecting Labor," *American Labor Legislation Review*, IX (1919), p. 30.

[29]See *Report of the Director*, 1926, Sec. 83, for a similar position taken by the Director on the total activity of the Labor Organization. See Chamberlain, J. P.: "The Power of the United States under the Constitution to enter into Labor Treaties," *Proceedings of the Academy of Political Science*, VIII (1918–20), pp. 448–57.

[30]Chamberlain, *ibid.*, *American Labor Legislation Review*, IX (1919), p. 338.

The migratory bird treaty is of great interest in showing the possibility of the use of the treaty-power in international labor relations. In 1913 certain migratory birds were placed under the protection of the United States by act of Congress. This act was declared unconstitutional. In August, 1916, a treaty was signed between the United States and Canada making the protection of certain migratory birds an international matter. A new act of Congress was passed in 1918 to carry out this treaty. Congress, therefore, assumed that under the treaty-power it could regulate a subject which ordinarily lay within the power of the states.[31] Finally, in 1920 the Supreme Court of the United States declared the act of Congress constitutional. This case is of peculiar interest from the standpoint of international labor legislation, since the regulations allowed control of private citizens of the United States. The treaty and law had nothing to do with rights and privileges of foreigners as has been the case quite often where the treaty-power has invaded the reserved power of the states. This is a characteristic possessed by most international labor treaties. Hence, by a slight broadening of the concept of the treaty-power as it now exists it could be made to cover the entire scheme of international labor law as established by the Peace Conference.[32]

Before considering the arguments presented before the Supreme Court and the opinion of the Court itself in the case under review, it might be well to see the position taken on the case in one of the leading law reviews. The comment in the *Columbia Law Review* indicates that the migratory bird treaty did not involve foreigners or Indians which had been the case in previous treaties invading the rights of the states. Personal rights were not the controlling factor in the decision. It was the broader question of whether or not the treaty involved presented a proper exercise of the treaty-power. The case also established the fact that the limits of the treaty-power are determined by international rather than municipal law, and that the delegation of the treaty-power to the national

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[31] Chamberlain, *op. cit.*, pp. 335–36.

[32] Chamberlain, J. P.: "Migratory Bird Treaty Decision and Its Relation to Labor Treaties," *American Labor Legislation Review*, X (1920), pp. 133–35.

government is a complete and undistributed delegation. It was observed that such an interpretation was essential to the understanding of Holmes' opinion. Moreover, strong support was given in the decision to the idea that what is a proper subject of negotiation is a political question, the determination of which by the proper authorities binds the courts. In this connection the practice of the Family of Nations would be of great, if not conclusive, significance.

> The method of approach herein suggested to a proper delimitation of the treaty-making power will, it is submitted, help determine the vexing question of the constitutionality of labor provisions in any international compact to which the United States may become a party. If the regulation of labor conditions is a common subject of international agreements, it falls within the range of the treaty-making power. In the adjustment of questions of sharp international import our nation ought to be able to meet the other nations of the world on an equal footing. A plea of *ultra vires* on the part of the United States would manifestly be intolerable.[33]

The case of *Missouri* v. *Holland*, decided on April 19, 1920, by the Supreme Court of the United States, was brought up on appeal from the District Court of the United States, Western District of Missouri.[34] The brief for appellant was presented by the Attorney-General of Missouri, including a thoroughgoing states' rights argument. The argument of the state attorney-general should be given at some length in order to understand the contrary significance of the opinion of the Court. The control of wild game, he argued, was a necessary incident of sovereignty. Since the time of Magna Charta it has been an esential right of a sovereign people. If the treaty-power may invade the sovereignty of the states when Congress may not, then there is no limit to what encroachments may come in the future. Wild game ownership is vested in the state as a trust for the people. Its ownership springs from sovereignty and is inherent in the police power of the state. If food is not under the exclusive control of the state then there is nothing that is. He argued that the Tenth Amendment was no delusion. It indicates the intention of the founders and should be observed now as when the Constitution was established.

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[33]See *Columbia Law Review*, XX (1920), pp. 692–95, for comment on the case.

[34]252 U.S. 416.

The powers reserved to the people must not be forgotten. Powers denied to the national government cannot, under any circumstances, be implied in the grant to the national authority. If state powers on purely internal affairs are denied, the system established by the Constitution will be destroyed.

> If the treaty-making power is not within the constitutional limitations relating to the powers reserved to the states, it is not limited by any restriction of the Constitution. The Federal Government itself, as well as the several states, would be at the mercy of the President and Senate. . . . In short, the Federal Government would be a government of men and not of laws. The question is not whether they will do these things, but whether or not, under our form of government they have the power.

One may almost see the attorney-general willing to admit that if the migratory bird treaty is constitutional there is nothing to prevent the national government from taking over the whole field of social legislation under the guise of the treaty-making power, for otherwise the police power of the states means nothing. He declared that the powers reserved to the states are just as sacred as the treaty-power established in the supreme law clause of the Constitution. "Are they not even more so since they are the object of specific reservation and necessarily restrict the general grant of power made to the treaty-making department of the government?" he asked. He emphatically argued that the cases usually cited in favor of the treaty-power do not in any instance hold that the reserved powers of the state are subject to annulment by the treaty-power when the treaty is on a subject of internal regulation reserved by the Tenth Amendment. Finally, he asserted that the powers in making treaties with the United States are presumed to act upon the knowledge that these matters are within the jurisdiction of the state. While the act of Congress is unconstitutional, the treaty and laws of Missouri remain intact.

The arguments in favor of the constitutionality of the act of Congress were developed by the Solicitor-General and Assistant Attorney-General of the United States. Congress has power, it was argued, to make the needful rules and regulations to carry out the powers delegated to the national government. This power is not limited to purely domestic concerns such as the regulation of interstate commerce, but extends to

the treaty-making power as well. While at home the citizen lives under a dual sovereignty, in international intercourse "We are one people, one nation." The Federal Government has powers "which belong to independent nations and which the several states would possess, if separate nations, and the exercise of these powers can be invoked for the maintenance of independence and security throughout the entire country." It was clearly argued that "if the national government has not the power to do what is done by such treaties, it cannot be done at all, for the states are expressly forbidden to enter into any treaty, alliance or federation." The real question is not the power of Congress to enforce the treaty, but whether or not it was within the power of the national government to negotiate and ratify such a treaty. Here it was argued that the entire treaty-power was given to the national government except as restrained by the clauses of the Constitution itself. The treaty-power is thus wholly outside the Tenth Amendment and any reference to it is irrelevant. A valid treaty really cannot rob the state of its power, for the power would already be in the hands of the national government. Local power remaining in the states depends upon how much power is expressly or by implication given to the Federal Government. "That the police or other powers of the states cannot be interpreted as an obstacle to the exertion of these Federal powers to make and enforce treaties has been too often decided to now admit of doubt.[35] The framers of the Constitution did not intend the treaty-power of the United States to be less than other states possess. There can be no limitation on the right to negotiate treaties essential to intercourse between nations. Moreover, it has been well settled that the treaty-power extends to all proper subjects of negotiation.

Mr. Justice Holmes gave the opinion of the Court. He observed that the state had instituted an action in equity to prevent the enforcement of the Migratory Bird Treaty Act of 1918 and the regulations of the Secretary of Agriculture on the same subject. The Tenth Amendment is not superior to the

[35] Among others the following important citations were given in the argument: *Wildenhus Case*, 120 U.S. 1, 17; *Ware* v. *Hylton*, 3 Dall. 199; *Chirac* v. *Chirac*, 2 Wheaton 259; *Geofroy* v. *Riggs*, 133 U.S. 258, 266; *Hopkirk* v. *Bell*, 3 Cranch 454; *U. S.* v. *43 Gallons of Whiskey*, 93 U.S. 188; *U. S.* v. *Winans*, 198 U.S. 371.

treaty-power because the treaty-power is established on a higher plane in the supreme law clause of the Constitution. The question is, Is the treaty valid? The act of Congress was merely a necessary and proper means of carrying out the treaty. An exception is made, however, that Congress cannot do under the treaty what it could not do without the treaty. An act of Congress is supreme only when passed in pursuance of the Constitution, but treaties are the supreme law when made under the authority of the United States. Does "authority" mean more than a formal act of ratification? Justice Holmes argued that this was an open question in any case. Moreover, sufficient power must be found in every civilized government to meet national exigencies. The act of Congress, it is true, was valid only after the treaty had been established as the supreme law of the land. Thus, the essential problem is the test of validity of treaties. Holmes asserted in unqualified language that the reserved powers of the states do not constitute an adequate test. The case must be considered in the light of the totality of American experience and not what was said a hundred years ago. The treaty in question does not go against any prohibitory words of the Constitution.

> The only question is whether it is forbidden by some invisible radiation from the general terms of the Tenth Amendment. We must consider what this country has become in deciding what that amendment has reserved.

Justices Van Devanter and Pitney dissented from the majority opinion of the Court.[36]

The relation of the Canadian government to the international labor movement is instructive. Section 91 of the British North America Act of 1867 provides that the Dominion is empowered "to make laws for the Peace, Order, and Good Government of Canada, in relation to all Matters not coming

[36] Shotwell, who advised the American representatives in the Peace Conference, has defended their stand. See Solano, E. John (editor): *Labour as an International Problem* (London, 1920), p. 59. Shotwell admits that legal objections to American entry might have been overcome, but urges that it would have been dangerous for Robinson and Gompers to use the migratory bird situation. Such a use of the treaty-power might unduly increase the power of the Senate. Such an explanation, of course, does not do away with the legal possibilities of the use of the treaty-power of the United States.

within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces." In the history of Canadian social legislation, the Dominion government attempted to control labor conditions by use of its power over criminal law. At the end of the eighties the question of jurisdiction was still in doubt. A Royal Commission on the relations of labor and capital was uncertain, in 1889, on this division of authority between the provinces and the Dominion. It was found at this time that local competition was an argument for uniform labor regulations throughout the Dominion. There was considerable public sentiment in favor of such regulation, and it was even urged that an amendment to the British North America Act should be secured if necessary. Though emergency regulations by the Dominion government were justified, the inactivity of the central government seemed correct in view of some of the decisions of the Judicial Committee of the Privy Council. Decisions during this period limited the use of penal power in the Dominion government as a means of encroachment upon the fields of legislation reserved to the provinces.[37]

The Treaty of Peace raised the question again through the formation of the International Labor Organization. It was thought at first that the Dominion might apply all of the draft conventions through the treaty-power. But an order-in-council in 1920 rejected this thesis and contended that the obligations under the treaty were met if the draft conventions and recommendations were placed before competent authorities either in the provinces or in the Dominion.[38] The opinion of the minister of justice was taken as competent, and the acts of the International Labor Conference were referred to the Dominion or provincial authorities as he suggested. But the opinion of the House of Commons was that an advisory opinion should be secured from the Supreme Court of Canada on the question of competence. This opinion was delivered on June 11, 1925. It confirmed the order-in-council of 1920, holding that the treaty obligations might be met by referring the conventions and recommendations either to the provincial or Do-

[37] Stewart, Bryce M.: *Canadian Labor Laws and the Treaty* (New York, 1926), pp. 47–54, *passim.*

[38] *Ibid.*, pp. 56–57.

minion authorities.[39]. The hours convention was held to be within the competence of the provinces except where territory was not in a given province or where government employees were concerned. This decision was in accord with previous practice on labor legislation. In the case of agriculture and immigration, it was held that there was a concurrent jurisdiction. But it was inevitable, considering the view prevailing in Canada, that most of the conventions would fall to the jurisdiction of the provinces. Of the twenty conventions adopted by the end of 1925, eight fell within the jurisdiction of the Federal Parliament. Five conventions were placed under the Dominion authority over navigation and fisheries. These were the conventions on (1) facilities for finding employment for seamen, (2) minimum age of children for admission to employment at sea, (3) unemployment indemnity in case of foundering of vessels, (4) minimum age of employment of young persons as trimmers and stokers, and (5) compulsory medical examination of young persons employed on vessels. The federal power over criminal law covered the conventions on (1) the weekly rest day, and (2) the right of association for agricultural workers. Finally, the convention on public employment agencies was met by the Federal Employment Offices Coördination Act which provides for coöperation between the Dominion and provincial governments. The remaining twelve conventions were held to deal with matters within provincial jurisdiction. Canadian opinion seems inclined to the view that even if there is uniform legislation in all the provinces, ratification would be impossible since the provinces would have to agree to maintain their legislation during the period the convention is in effect.[40]

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[39]Stewart, *op. cit.*, pp. 56–57. See International Labor Conference *Proceedings*, 1921, p. 139; *Report of the Director*, 1926, Sec. 118, for further discussion of this question. Legally, the Canadian problem is simplified because the treaty-power is in the Crown; but actually, since Canada is a full Member of the Organization, this fact is of doubtful value. It is obvious that the developing treaty-power of the Dominion of Canada does not occupy the same high place as in the United States.

[40]Stewart, *op. cit.*, pp. 58–63. Director Thomas pointed out in 1928 that the Trades and Labour Congress of Canada was reviving in membership and was demanding federal action on the conventions and recommendations. *Report of the Director*, 1928, Sec. 88. See *Official Bulletin*

A similar position has been taken by Australia. The first Australian ratification of a convention was secured in 1925, when the convention on facilities for finding employment for seamen was ratified.[41] In the debates of the Sixth Session of the Conference in 1924, on the proposed draft convention on the weekly suspension of work in the glass industry using tank furnaces, the Australian representatives made it clear that under the Constitution of the Commonwealth of Australia it would immediately become a recommendation.[42]

The Swiss government has also made use of the provisions of Article 405 of the Treaty. In the Third Session of the Conference in 1921, when the proposed convention on a weekly rest day was under consideration, the Swiss representatives were much interested in the exceptions proposed in the convention. It was argued that part of the legislative powers needed to enforce the convention belonged to the cantons and not to the central government.[43] The difficulties of Switzerland were not ended with the adoption of the convention. In 1926 the Director noted that the Swiss Assembly had decided to treat the convention on weekly rest as a recommendation under paragraph 9 of Article 405.[44] The Swiss held that they could not ratify a convention which dealt with matters included in cantonal authority, and the Federal Council had suggested that the convention be applied to those establishments under federal law. The Director was particularly struck by the Swiss position. He argued that the Swiss exception did not fall within the exception of Article 405, since there must be a specific constitutional limitation before use can be made of it. He pointed out that in 1920 the Federal Council had sustained the supremacy of the treaty-power of the Confederation[45] in much the same way in which it has been sustained in the argument already developed. Moreover, in the preparation of the convention on weekly rest the Swiss government had been

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XIII (1928), pp. 34–38, for action on the conventions and recommendations adopted in 1926, by which it was held that all of them came within the power of the Dominion Parliament.

[41] *Report of the Director*, 1926, Sec. 51.

[42] International Labor Conference *Proceedings*, 1924, pp. 396–97.

[43] International Labor Conference *Proceedings*, 1921, p. 360.

[44] *Report of the Director*, 1926, Sec. 52.

[45] See *Official Bulletin* III (1921), pp. 4–10.

consulted. The opinion of the government at the time of the questionnaires was that the federal authority might legislate on weekly rest. The Director sensed a danger that federal governments might transform all of the conventions adopted by the Conferences into recommendations creating two very distinct sets of obligations between members of the Organization.

The German government has not been insensible of the significance which might apply to the recommendation clause of Article 405. The Director contended in 1926 that the German government's broad interpretation of paragraph 9 was against the spirit of the Treaty. That government announced in September, 1925, that it was going to consider the convention on the age of admission to agricultural employment as a recommendation. It was urged that the relation of the convention to education would require the federal government to go too far into the field of education reserved to the lander.[46] The Director of the International Labor Office protested against this interpretation in his correspondence with the German government. In reply it was stated that though the German government would not take advantage of the provision, they must maintain the correctness of their interpretation of the powers of the Reich. Thomas was insistent, however, that the full delegation of the treaty-power to the central government made ratification possible.

The use of federalism to avoid active participation in the International Labor Organization has been slight. A fine spirit of coöperation has prevented federalism from becoming a subterfuge to avoid normal obligations under the Treaty. The incidents which have been mentioned comprise practically all of the important uses of the federal principle in opposition to the supremacy of the treaty-power in the international relations of labor.[47] In 1928 the Director said:

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[46] *Report of the Director*, 1926, Sec. 53; see also *Report of the Director*, 1927, Sec. 200.

[47] See Watrous, George D.: "The Effect on American Public Law of Our Written Constitutional Provisions Making Treaties Law," *Proceedings of the Second Pan-American Scientific Congress*, 1915–1916, Section VI, pp. 347–60, for a treatment of the United States and Latin American constitutions on the question under discussion. See *Report of Director*, 1928, Sec. 108, where Thomas points out that though the Argentine

> In federal countries, too, such as Canada and Australia, which might take refuge behind their federal constitution and the facilities given them by Article 405 to escape from the general obligations imposed by that article, the Governments are nevertheless endeavouring by agreements between the separate states and by inter-state conferences to take their part in the general work of ratification.[48]

A study of constitutional law will not sustain the extreme position taken by the American delegates in the Commission on International Labor Legislation in the Peace Conference. No doubt James Brown Scott was right when he argued that the United States could not sign a Draft Convention setting up the International Labor Organization which would make us accept international labor conventions unless, as the British Plan suggested, there was a specific rejection by the proper authorities. But this was not, after all, the ultimate contention of the American delegates. Their fundamental contention was that the police power of the states was a limitation on the treaty-power of the United States. This has, at least, been shown to be a doubtful position. The numerous statements of the American representatives that the individual American states were sovereign may be lumped together under the general contention that the entire power over social legislation, except where delegated to the national government, remains in the states. Therefore, since the international regulation of labor would have to be carried on through the diplomatic channels unavailable to the states, the ratification of conventions would be impossible under our present constitutional structure. Perhaps it is a harsh judgment, but either the American delegates were misguided and misinformed or they were not wholly sincere in their support of the international labor movement.

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provinces are passing legislation on the hours of labor, national ratification has been proposed though not effected.

The *Report of the Director* gives each year a tabular summary of the ratifications of conventions. It cannot be denied, however, that unitary governments have ratified individually more conventions than federal governments.

[48] *Report of the Director*, 1928, Sec. 4. The precedent of interstate conferences and agreements may prove valuable when, if ever, the United States becomes a Member of the International Labor Organization.

It should be remembered that both Robinson and Gompers were mistrustful of the strong socialistic influences represented on the commission. Gompers believed that American labor was far more advanced than other working groups, and Robinson, being a conservative financier, could not look with favor on a movement which might effectively bring about more interference on the part of the government in economic affairs.

ESTABLISHING STATE REGULATION OF MOTOR CARRIERS

By JOHN J. GEORGE

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The pronouncement of the Supreme Court in *Munn* v. *Illinois*[1] (1876) laid the basis for successful state efforts at subjecting utilities to public regulation. The grain elevator "standing in the path of commerce and taking toll from all who pass" became clothed with a public interest and subject to regulation in that interest. Fifty years after that monumental decision, motor carriers are running in the paths of commerce and likewise taking toll from those who patronize them. But the public interest as basis for regulating motor carriers differs from that in the case of all other utilities in that extensive use is made of public thoroughfares in the transaction of their business: public highways costing one and a half billion dollars are used in the prosecution of private gain.

Until a short time ago there existed no form of regulation applicable to the motor carriers which was not equally applicable to the owner of the private car. Only seven states undertook regulation before the World War, Pennsylvania taking the lead in 1914. Colorado, Wisconsin, and New York followed in 1915, Maryland in 1916, Utah and California in 1917. Four states began regulation in 1919[2]; seven in 1921[3]; Rhode Island in 1922; six states in 1923[4]; Kentucky in 1924; ten states in 1925[5]; and three in 1926[6]. By the end of 1927

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[1]94 U. S. 113

[2]Arizona, Massachusetts, New Hampshire, and Vermont.

[3]Connecticut, Illinois, Maine, Ohio, New Jersey, Washington, and West Virginia.

[4]Iowa, Michigan, Montana, Nevada, Oklahoma, and Virginia.

[5]Idaho, Indiana, Kansas, Minnesota, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, and Wyoming.

[6]Arkansas, Louisiana, and Mississippi. Data in notes 2 to 6, inclusive, found in Motor Vehicle Conference Committee Pamphlet, *State Regulation of Motor Vehicle Common Carrier Business*, 1927.

forty-four states had enacted regulatory legislation. Approximately two-thirds of the states have established regulation since 1923.

Motives Actuating Regulation

The last decade has seen a marvelous rise in the construction and maintenance of highways as a function of state government. Motives actuating the establishment of regulation of motor carriers arise in the first place from the necessity of protecting and preserving those highways. According to the Bureau of Public Roads, United States Department of Agriculture, there was on January 1, 1926, 521,915 miles of surfaced highway. The state highway systems totaled 270,653 miles[7]. During the year 1926 surfaced roads increased by 35,000 miles. Ohio and Indiana each has more than 40,000 miles of surfaced road[8]. States with extensive state highway systems, in order, are Texas, New York, Pennsylvania, and Ohio. California and Illinois rate high on surfaced roads but low on state system mileage. Texas presents something of an anomaly in that rating at the top in extensive state system of highways she has been among the very last to establish regulation of those using the roads for private profit. Her tardiness, of course, is explainable in large part by the fact of the small percentage of her state highway system in relation to total road mileage in the state. Nor has the good roads movement gained such acceptance in Texas as in some of the more densely populated areas of the northeast, middle west, and Pacific Coast sections. The cost of constructing and maintaining the highways is in final analysis paid primarily by the man who owns a private car and private truck or by the man who owns neither of them.

This non-carrier taxpayer, paying the bulk of the taxes, is entitled to consideration in relation to the carrier who would turn the public thoroughfares into a place of private business. Highway traffic is becoming more congested and the

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[7]National Automobile Chamber of Commerce, *Facts and Figures of the Automobile Industry*, 1927, 25. Hereafter cited as *Facts and Figures*.

[8]Indiana leads all other states in mileage of surfaced highway. In that state are located enormous gravel deposits.

presence of the motor carrier adds nothing to the relief of this traffic condition. In each of the states, New York, California, Ohio, Pennsylvania and Illinois there are more than a million private cars and from 175,000 to 300,000 private motor trucks demanding a place on, and unimpeded use of, the public highway. Private passenger cars and private motor trucks in the United States reach the enormous figure of 22,000,000[9].

These figures enable one to appreciate more intelligently the position of the owner of the private car in the use of the highway, and emphasize the necessity of public control over the types of vehicle which would put to a purely commercial use these costly and much demanded thoroughfares.

Protection of pedestrians and of occupants of both public and private motor vehicles using the highways constitutes a second motive for establishing motor carrier regulation.

A third motive actuating regulation is the prevention of undue competition. Often the existing motor carriers have joined forces with public and other private agencies seeking regulation in order that they may be present when the regulatory policy is determined upon. California motor carriers have accepted an invitation to be represented on a committee to propose new legislation.[10] They appeared also at the initial hearings instituted by the Commission seeking to determine regulative policy.[11] One function of motor carrier lobbies is to make more difficult the establishment of more competitors in motor transportation.

The desire to check competition emanates greatly from the rail carriers who seek restrictions on their newly-arrived competitors.[12] To the existing carriers it is clearly a question of self-preservation. Public agencies are coming to see that regulation to restrict competition is highly desirable to safeguard all interests. Speaking in 1917 the New York Public Service Commission stated that the purpose of the Transportation Corporation Laws of 1915 was emphatically and

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[9]*Facts and Figures*, 20–21.

[10]Railroad Commission of California, *Annual Report*, 1926, 22.

[11]See below.

unmistakably to protect against unfair and dangerous competition.[13]

A fourth powerful motive involved in the instituting of regulation is the necessity of securing adequate, safe, and proper service to the public. The Missouri Act of 1927 states that it is the travelling public whose convenience, protection, and benefit justify state regulation. This fourth motive is one the definition, analysis, and safeguarding of which has produced more administrative and legal difficulty than has any other phase of regulation. Easier is the task of the legislature to lay down new rules of action applicable to future conduct than is that of the administrative body to interpret and apply those rules in particular cases.

Pioneer Experience of California

While the motor carrier industry is yet in its infancy, the movement to regulate it is more so. Some reasonable grasp of the difficulty in establishing regulation by a pioneer state can be gleaned from a sketch of the California experience.

In 1915 the Western Association of Short Line Railroads asked the California Railroad Commission to assume jurisdiction over one Hackett who was hauling freight by motor over the highways in competition with the railroads. Hackett admitted he was a common carrier in the common law sense, but contended he was not subject to commission jurisdiction as specified in the Public Utilities Act of the State. A hearing was held at San Francisco, September 7, 1915. The essential points as brought out by the commission are here given.[14]

Article XII., Section 17 of the State Constitution makes railroad, canal and other transportation companies subject to the control of the state legislature. The Constitution likewise creates the railroad commission and gives it authority to fix rates for hauling freight and pasesngers by railroad or "other transportation companies," and obligates these

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[12]*Western Association* v. *Hackett* (Calif.), Public Utility Reports. 1915 F, 997-1012. Hereafter referred to as P. U. R.

[13]*Re Troy Auto Car Co.*, P.U.R. 1917A, 703. For the objects and construction of the 1915 law see P.U.R. 1916, 33, and 1916D, 10.

[14]Western Association v. Hackett (Cal.) P. U. R. 1915 F, 997-1012.

agencies to adhere to the rates so fixed. An amendment to the constitution ratified in 1911 declares railways and canals for transporting freight or passengers or express public utilities; likewise pipe lines, and any plant for producing or distributing heat, light, power or water, or for furnishing storage or wharfage facilities "and every common carrier." These public utilities are made subject to regulation by the railroad commission as may be provided for by the legislature. Not only those specified above are subject to regulation by the commission, but likewise any other agencies which the legislature may hereafter declare public utilities.

The amendment of 1911 further provides that the commission shall have such power to regulate rates and service of the public utilities as the legislature shall confer on the commission and that the legislature has unrestricted power to confer on the commission authority over the utilities.

The commission then observes: (1) The Constitution makes every common carrier a public utility; (2) every public utility is subject to regulation by commission only as the legislature shall confer authority on the commission; (3) in the *Market Street Railway Case* (64 Pacific, 1065) the State Supreme Court has declared that the definition of transportation companies as given in the legislative act of 1880 did not include street railways as being subject to commission jurisdiction; and (4) the Supreme Court has held drays, delivery wagons, freighting wagons, and teaming to be transportation agencies, but not subject to commission jurisdiction. Therefore, concluded the commission: (1) complainant must show that legislature has actually conferred on the commission power to regulate and control motor buses, auto trucks, and auto stages; (2) our examination of the public utilities act reveals the determination of the legislature to specify exactly the public utilities over which the commission is to exercise control; (3) transportation agencies named in the complaint have not been put under commission control and the complaint is dismissed.

From this decision of the commission it might appear that the only way to put the complained of agencies under commission regulation would be by specific legislative act. But the Association appealed to the State Supreme Court, which

accepted the commission's inability to regulate the agencies involved in so far as the existent statutes were concerned, but declared that Section 22 of Article XII, of the California Constitution as amended 1911 *did give the commission power to regulate motor carriers as being included in the term "other transportation companies."* (Italics are mine.)

The court ordered the commission to take jurisdiction, whereupon the commission directed all operators of auto stages and auto trucks using the highways for hire to file with the commission time and rate schedules. Soon the legislature enacted the law of May 10, 1917,[15] known as the Auto Stage and Truck Transportation Act, which specifically gave the commission power to regulate auto stages and trucks using the highways for compensation, between definite points or over a regular route. Sightseeing buses, taxicabs, and hotel buses were exempted from regulation by the act, as well as carriers operating exclusively within municipalities.

Under the act the commission instituted public hearings in Los Angeles and San Francisco to investigate the various rules and regulations used in different parts of the state. To these hearings came representatives of practically all the operators, whose evidence aided the commission to reach its Decision 4814. This decision took the form of a body of administrative rules and regulations covering sixteen phases of motor carrier activity, such as sanitation, overcrowding, and safety of the carrier vehicle, and the qualifications and conduct of drivers. Based on actual operating experience as brought out in public hearings, these regulations have thereby the strongest possible recommendation. They proved an efficient working standard in California during the stress of war-time, and have required little modification since. Other states have had an opportunity to pattern their regulations on the California model.

From time to time amendments have been made to the statutory provisions. Several important changes were made in 1919. One eliminated the previous requirement that an applicant for certificate to operate before securing a certificate from the commission must obtain approval from authorities

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[15]Statutes 1917, Chapter 213, p. 330.

of every county and municipality through which he proposed to run. Another modification enlarged the jurisdiction of the commission from common carriers to include private carriers as well. Transfer of any right attaching to any certificate could be made only by commission approval. Also power to revoke, suspend, alter or amend certificates was conferred on the commission.[16]

In 1921 the provision of the Public Utilities Act regarding free passes furnished by railroads was extended to motor carriers.[17] The status of "farm haulers" aroused such agitation that in 1923 a legislative amendment exempted those carriers whose hauling began or ended on a farm from the necessity of securing a certificate to operate.[18] The requirement of a filing fee of $50 with application for certificates to operate was also set up.[19]

Motor vehicles engaged salely in the transportation of *bona fide* pupils to or from home or an institution of learning were exempted from regulation.[20] A provision was added relative to offering testimony and other forms of evidence.[21] Also power was conferred upon the commission to formulate uniform, non-discriminatory and reasonable regulations applicable to interstate carriers.[22]

Procedural Means of Establishing Regulation

Two procedural means have been employed to bring under regulative control motor carrier operation: Construction of existing utility or common carrier law, and statutory enactment *de novo*.

An early instance of regulatory power declared by construction of existing law is that of the Georgia Railroad Commission in 1915. It declared that under the railroad laws

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[16]These provisions established by the Statutes of 1919, Ch. 280, p. 457.

[17]Ch. 840, *Statutes of 1921*, 1609. Likewise power to require reports.

[18]Ch. 310, *Statutes of 1923*, 644. This exempting clause was later declared unconstitutional.

[19]*Ibid.*

[20]*Statutes of 1925*, Ch. 145, 297.

[21]*Ibid.* Ch. 153, 302.

[22]*Ibid.* Ch. 254, 433. For sketch of the process of constructing the body of California regulatory law see *Annual Report* of Auto Stage and Truck Transportation Department, 1924-5, 25-30.

of 1907 it had power to regulate motor carriers.[23] The Pennsylvania Commission early assumed jurisdiction over motor carriers by interpretation of the Public Service Company Law governing common carriers.[24] In 1922 the Arizona Commission declared that motor vehicles carrying passengers and property for hire were common carriers, that they were public service corporations under the state constitution, and as such subject to the jurisdiction of the commission.[25] Maryland[26] ruled in 1915 that all common carrier vehicles on the highway must register with the commission and give additional information.

In 1924 the Nebraska commission issued an order relative to certain fiscal affairs of motor carriers, but later rescinded the order, thereafter confining its attention to such phases of motor carrier regulation as liability protection and safety requirements.[27] The Arkansas commission has been unsuccessful in its assumption of power over motor carriers. The state supreme court has held that under the existent railway laws the commission has no power to regulate motor carriers.[28]

Not only interpretation by commission and court, but construction of existing law by the attorney-general has served to bring motor carriers under regulation. The commission of Texas was advised on September 10, 1925 by Attorney-General Dan Moody that the state laws relative to railroads and express companies justified commission control of motor trucks offering service to the public and operating over a regular route.[29]

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[23]American Electric Railway Association, *Bulletin 120*, 27.

[24]E. M. Vale, Chief of Bureau. to A. E. R. Association, *Letter*, January 12, 1922.

[25]Re Union Auto Transportation Co., P. U. R. 1922 A, 608.

[26]P. U. R. 1915 C, 365, 925.

[27]A. E. R. A. *Bulletin 120*, 134–38. A comprehensive system of regulation treating nine phases of motor carrier activity was instituted by the Nebraska Commission on June 30, 1927.

[28]*Ibid.* 9; also *Arkansas Railroad Com.* v. *Independent Bus Line*, 285 S. W. 388. This decision is similar to that of California Commission in Western Association v. Hackett, referred to above.

[29]A. E. R. A., *Bulletin 120*, 262–65. Comprehensive statutory regulation in Texas was not set up till 1927.

In perhaps four-fifths of the states regulation has been instituted by statutory enactment. Most frequently this has taken the form of a separate motor vehicle act conferring on the existent utility agency power over motor carriers.

One instance appears in which a specific act has created a new agency and conferred on it power to regulate motor carriers.[30]

Sometimes motor carrier legislation in a particular state appears in the general motor vehicle laws, as in the case of Oregon.[31]

In several states supplementary acts have been added to the existing public utility act, thereby putting motor carriers on greatly the same basis as are other utilities. Examples of this are found in Maryland, Utah and Wyoming.

Michigan affords an example of a combination of special act and general law, the act of May 23, 1923,[32] providing *de novo* for several phases of regulation and declaring that the laws of the state governing common carriers in general are applicable to motor carriers.

Experimentation and Example

Necessarily there has been much experimenting in establishing regulation of motor carriers; and as is true in case of regulating other utilities, so in bringing motor carriers under control, the pioneer states have done more of the experimenting than have the states taking up the process later. The more recent states have had an opportunity to profit from the experiences of the pioneer. Even a casual examination of representative regulatory statutes enacted by legislatures far removed in distance reveals not only a similarity in statement concerning many regulatory provisions, but the later statutes reveal a definite recognition of the mistakes in the laws of earlier states and a firm determination to avoid the practical and constitutional pitfalls which have brought grief to regulatory bodies in earlier states. Take an illustration: Until 1923 no filing fee was required of applicants in California; there developed much trifling with the commission

[30]Kentucky Act of March 5, 1926.
[31]*Motor Vehicle Laws of Oregon*, 1925, 58–62.
[32]Public Act 209, Regular Session, 1923.

by irresponsible persons who, scheduled for hearings, failed to appear at the appointed time. In 1923 the Crittenden amendment provided a filing fee of $50, and this requirement was left undisturbed by the decision of the state supreme court in the *Franchise Motor Freight case.*[33] Wisconsin in her law of 1927 provides for a filing fee of $25.[34] Into the Act of 1925 Minnesota incorporated a provision for a filing fee of $50.[35] It would seem clear that the experience of California has been used to good advantage by these two states instituting regulation later.

Legislative enactments for regulating the automobile in public service have inevitably lent themselves to much indefiniteness and vagueness in phraseology. A few examples will illustrate. The California act seeking to regulate every "transportation company" defines the term as being

> Every corporation, or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing, any automobile, jitney bus, auto truck, stage or auto stage used in the business of transportation of persons or property, or as a common carrier, for compensation over any public highway in this state between fixed termini or over a regular route.

Such operations exclusively within municipalities, and taxicabs and sightseeing buses being exempted from state regulation, as well as "any other carrier which does not come within the term 'transportation company'" defined above.[36]

The Kentucky statute is greatly similar in phraseology but prefixes the word "motor" to the term "transportation company."[37] Pennsylvania lists many agencies as public service companies, among them being, for our immediate consideration, "stage line corporations" and "common carriers." The latter term is then defined in an extremely comprehensive manner as

> Corporations or persons engaged for profit in the conveyance of passengers or property or both, between points in this Commonwealth by, through, over, above or under land, water or both.[38]

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[33]69 California Decisions 473, April 27, 1925.

[34]*Bus Age*, August, 1927, 48. This act became effective in July, 1927.

[35]Chapter 185, *Laws of 1925*, H.F. 929.

[36]*Statutes of 1917*, ch. 213, Section 1(c).

[37]Act of March 5, 1926, Sec. 1.

[38]*Public Service Company Law* of 1913 as amended, Section 1.

The Ohio statute applies regulation to "motor transportation companies" and defines the term substantially as does the Pennsylvania act, except that the phrase "any motor vehicle not usually operated on or over rails" appears; and the "by, through, over, above or under land or water or both" phrase of the Pennsylvania statute is omitted.[39]

New York has used terminology a bit odd in subjecting to regulation "omnibus corporations", but the definition of what constitutes an omnibus corporation leaves little doubt as to who is subject to the law.[40]

The question of whether the regulatory statute properly included private contract carriers has given rise to much administrative difficulty and also litigation in California,[41] Ohio,[42] and Michigan.[43]

Ohio has taken steps to avoid the constitutional experience of Michigan in dealing with carriers hauling under private contract. The Michigan statute subjecting all motor carriers to regulation was invalidated early in 1925[44] by the Supreme Court of the United States, which tribunal pointed out the effect of such statutes was to convert property employed entirely as private carrier into public property by legislative fiat. Following this decision as a precedent the Supreme Court of Ohio so interpreted the regulatory statute[45] in that state as to exclude private carriers, whereupon the Ohio legislature so amended[46] the regulatory act as to exempt from its provisions those engaged as carriers under private contract.

State Regulation Declared Valid

Much litigation has arisen over specific phases of state regulation of motor carriers. This litigation has usually

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[39]*General Code*, Sec. 614—84.

[40]Article 5 of Act of May 4, 1926 amending the transportation corporations laws.

[41]*Frost et al.* v. *R. R. Com. of California*, 46 Supreme Ct. Reporter, 605 (1926).

[42]*Hissem* v. *Guran*, 146 N. E. 808 (1925).

[43]*Michigan Public Utilities Com.* v. *Duke*, 266 U.S. 570 (1925).

[44]Note 43.

[45]*Hissem* v. *Guran*, 146 N. E. 808.

[46]Laws of Ohio, 1925, H. Bill 90, Section 1.

resulted from the commission interpretation and application of the regulatory statute, and often the courts have reversed the commissions. As precedents are established, especially by the higher state and Federal courts, interpretation becomes clarified. It happens that the commission of one state has been overridden in only one per cent of the cases appealed, while the reversals in an adjoining state during the same period have reached sixty and even seventy-five per cent of cases appealed.[47]

But there has been relatively little litigation over the validity of the principle of regulation, and when such has arisen the courts, state and Federal, have taken the ground that such regulation is a valid exercise of the state police power to preserve its highways, to restrict the use of them for private profit, and to protect the health, comfort, convenience, safety, and general welfare of its people.[48] Between 1915 and 1928 the courts in thirteen different states have decided that regulation is valid.[49] The state can delegate to the commission and to units of local government the exercise of state power to establish rules and regulations concerning the use of the highways by motor vehicles, and where the commission enjoys the power to determine the period in which the recipient of the certificate shall exercise the privileges

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[47]Conferences with regulatory bodies in Kentucky and Ohio, respectively.

[48]For a recent statement to this effect see *Barbour* v. *Walker* (Okla. Sup. Ct.), 259 Pacific 552, decided Sept. 13, 1927.

[49]*Re Automobile Traffic* (Ariz.), P.U.R. 1915C, 945; *Ex parte Dickey* (W. Va. Sup. Ct. of App.), 85 S.E. 781 (1915); *Haddock* v. *State* (Ariz. Sup. Ct.), 201 Pacific, 847; *Mason* v. *Intercity Terminal Co.* (Ark. Sup. Ct.), 251 S.W. 10 (1923); *Dobeson* v. *Mescall* (New York Sup. Ct. App. Div.), 199 N.Y. Supplement 802, citing *Hadfield* v. *Lundin*, 98 Wash. 657, *Schoenfeldt* v. *Seattle*, 265 Fed. 726, and *People* v. *Rosenheimer*, 209 N.Y. 215; *Gruber* v. *Commonwealth* (Va. Sup. Ct. of App.), 125 S. E. 427; P.U.R. 1924B, 193 (Mont.); *Restivo* v. *West* (Md. Ct. of App.), 129 Atl. 884; *Greely Transportation Co.* v. *People* (Col. Sup. Ct.), 245 Pacific, 720 (1926); *Packard* v. *Banton*, 264 U.S. 140; *Ex parte Tindal*, 229 Pacific, 125; *Gilmer* v. *Pub. Utils. Com.* (Utah Sup. Ct.), P.U.R. 1926D, 469; case in note 48; and recently *Roberto* v. *Commissioners of Public Utilities* (Mass. Sup. Jud. Ct.), 160 N.E. 321, decided March 5, 1928; *Harlacker* v. *Adams Transit Co.* (Pa.), P.U.R. 1928A, 12; for decision upholding Wisconsin regulation, see *Bus Age*, July, 1928, 139.

granted, the commission may specify in the certificate whatever conditions and terms are demanded by public convenience and necessity.[50] The person who seeks to show a statute unconstitutional must present evidence relative to the application of the statute to himself and not as it affects someone else.[51]

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[50]*Roberto Case* in note 49.

[51]*Salt Creek Transportation Co.* v. *Public Service Commission of Wyoming* (Wyo. Sup. Ct.), 263 Pacific, 621, decided January 31, 1928.

IDEOLOGY OF BUSINESSMEN AND PRESIDENTIAL ELECTIONS

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I

The ideology of our businessmen with respect to presidential elections has two chief constituents: first, Democratic rule is invariably accompanied by depressed business conlitions, and second, a presidential year is a "bad" year for business. These two phenomena are taken to be casually connected. Hence, the election of a president is viewed by substantial citizens with real apprehension. Drummers vie with captains of industry in pointing out to their uninitiated social and business associates the many benefits to "business" of a Republican administration. Party allegiance or adherence to "principles" is laudable enough, but in a national election the party of one's customary choice must be set aside and a vote cast for Republican prosperity.

Whether presidential years and periods of Democratic administration mean active or slack business, in a consistent sense, admits of a ready answer when we examine our business history. The "Business Annals" for the United States compiled by Dr. Thorp of the National Bureau of Economic Research have been adapted in drawing up the following conspectus of business conditions in this country from 1868 through 1925.

Since the Civil War we have had only four Democratic administrations. For the sixteen years of Democratic rule (1885-1888, 1893-1896, and 1913-1920) our table shows 9¼ years of active and 6¾ years of depressed business. In percentage terms, 58 per cent of the period of Democratic control was characterized by upward and 42 per cent by downward business activity. When the G. O. P. was in power, our business fortunes were only slightly better. For the 42 remaining years of the 58 year period, business was prosperous 26 and depressed 16, the respective percentages being 62 and 38.

CONSPECTUS OF BUSINESS CONDITIONS: 1868-1925[1]

1868—P	1897—D½; P½
1869—P	1898—P
1870—D	1899—P
1871—P	1900—P½; D¼; P¼
1872—P	1901—P
1873—P½; D½	1902—P
1874—D	1903—P¾; D¼
1875—D	1904—D¾; P¼
1876—D	1905—P
1877—D	1906—P
1878—D½; P½	1907—P¾; D¼
1879—P	1908—D
1880—P	1909—P
1881—P	1910—D
1882—P¾; D¼	1911—D
1883—D	1912—P
1884—D	1913—P½; D½
1885—D¾; P¼	1914—D
1886—P	1915—P
1887—P	1916—P
1888—P½; D¼; P¼	1917—P
1889—P	1918—P¾; D¼
1890—P¾; D¼	1919—P
1891—D½; P½	1920—P¼; D¾
1892—P	1921—D
1893—D	1922—P
1894—D	1923—P½; D½
1895—D¼; P¾	1924—D½; P½
1896—D	1925—P

[1]The symbol P stands for Prosperity, and D for depression. The fractions refer to parts of the year. Prosperity as used in the table covers the "revival" and "prosperity" phases of the business cycle as distinguished by Dr. Thorp; similarly, the term "Depression" covers the "recession" and "depression" phases. Differences in intensity of business oscillation are ignored.

There does not seem to be any conspicuous difference in the state of business during Republican and Democratic administrations. The inveterate belief of the business community that prosperity is a Republican monopoly has clearly little experiential basis.

When we turn to a comparison of presidential and non-presidential years, the figures do not seem to bear out the popular impression any more fully. The 15 presidential years of the period were characterized by prosperity in 8½ and by

depression in 6½ years, the percentages being 57 and 43, respectively. In the 43 non-presidential years, business was active 26¾ and depressed 16¼ years, the percentages being 62 and 38. The difference between presidential and non-presidential years is not sufficiently marked to admit of any simple characterization with respect to differential business fortunes, or to suggest a causal connection between national elections and business conditions.

A more satisfactory comparison of presidential and non-presidential years would call for an examination of a record of business recessions rather than of business prosperity or depression, for the putative causal sequence runs in terms of a change in the business situation being occasioned by a proximate national election. Dr. Thorp lists business recessions in the following years for the period in question: 1870, 1873, 1882, 1888, 1890, 1893, 1896, 1900, 1903, 1907, 1910, 1913, 1918, 1920, and 1923. If a business recession were as likely to occur in a presidential year as in a non-presidential year, we should expect one-fourth of the above recessions to fall in presidential years. The number of recessions given is 15, and four of these are for presidential years, which is approximately what we would expect if chance were the ruling factor. If we add another business recession for 1927, we have exactly one-fourth of the recorded recessions occurring in years of a national election. The belief that a presidential election is a systematic factor in generating business declines cannot be supported, therefore, by an appeal to facts.

II

Yet, widely accepted ideas should not be regarded as disposed of when they are shown to be irrational. The interesting query arises as to how such attitudes have come to be adopted and maintained. A number of guesses may be ventured toward explaining the genesis of the two constituents of the political ideology of businessmen that we have subjected to factual scrutiny.

The widespread belief in the co-existence of national elections and business depressions is due directly to the acceptance of the imputed temporal sequence of impending Democratic rule and accentuated caution in business operations, and indirectly to the alleged association between Democratic control

and business depression. An explanation of the article of current business ideology that we are presently examining involves, therefore, an explanation of the common apprehension of a business slump under Democratic administrations. But before we attempt to do this, two factors which reinforce the belief that presidential years are bad years for business should be mentioned. One is that business cycles have been on the average four years in duration in this country, and though business recessions and national elections have not been synchronous, the equality of the two periods (the average period between recessions and the fixed period between elections) may have engendered a mental association, causally formulatel, between these two phenomena. Another factor is the occurrence of severe business recessions in the years 1896 and 1920. These years of business reversal have left a deep impress on the minds of businessmen and the simultaneous occurrence of presidential elections may have strengthened the shibboleth that presidential years are bad for business.

An explanation of the myth, so precious to the hearts of our businessmen, that a Democratic regime spells adverse business may be found in three factors: first, the customary position of the Democratic party on the tariff; second, the tradition that the Democratic party is the party of the masses; and third, the "free silver" platform of 1896 and the leadership of Bryan.

The avowed anti-protectionist attitude of the Democrats has not served to endear them to the captains of industry and finance. To be sure, the Democrats when in power never effected any serious downward revision of tariff schedules, but the possibility was always there. A century of active propaganda by the manufacturing interests has inspired a tacit acceptance of protection among the respectable classes. The dogma that a lowering of the tariff would lead to a severe decline of the volume of production and trade, along with a permanent reduction of the "American" standard of living is an inexpugnable article of faith in the political ideology of substantial citizens.

The tradition that the Democratic party is the party of the common man is another widespread belief which helps to explain the businessman's association of Democratic administrations with business depressions. The ideals of Jacksonian

Democracy are still imputed to the Democrats of today, and a Jacksonian Democrat is not likely to be a militant for the continued preservation and aggrandizement of the vested interests.

But perhaps the most significant of the three listed factors is the Democratic stand on the monetary issue in the campaign of 1896. During the second administration of Cleveland, business was consistently depressed. A glance at our table shows that business was slack in 3¼ of the four years. The business interests were diffident of the Cleveland administration, and applauded the nomination of McKinley, "the advance agent of prosperity." But soon they had reason to quarrel not only with Cleveland but with the Democrats as a national party.

The success of Cleveland in preserving the gold standard was deplored by the radical element of his party, which was in control of the convention of 1896. Cleveland's record was repudiated, the Populist money doctrine adopted, and the "Cross of Gold" orator chosen to lead the fight for the free and unlimited coinage of silver at the ratio of 16 to 1. The impetuous Bryan infused a strong moral note into the campaign, with the rural, proletarian, and debtor classes carrying off all the laurels. He extolled the virtues of the poor and deprecated the vices of the moneyed class. It is no wonder that propertied citizens viewed the Democratic platform and leader with alarm. Convinced that Bryan was the arch-foe of respectability, he was denounced as a demagogue, blasphemer, and anarchist; and the Democrats by virtue of their adoption of the Populist cause became Popocrats. Businessmen dug into their coffers and contributed generously to the Republican war-chest in order to preclude that partial confiscation of their accumulated wealth that would virtually take place if the gold standard were abandoned. Apprehensive lest Bryan become President, contracts were made subject to fulfillment only in the event of McKinley's success; and before election day many employers informed their workers not to return to their jobs if Bryan was victorious at the polls.

Four lean years of Democratic rule followed by a Democratic attack on the gold standard, the very avatar of vested rights,

left an indelible impression on the minds of the estimable persons of the day. The Democratic party came to be viewed as inimical to "business," and as anathema to "prosperity." With the passage of time, the attack on property rights implicitly contained in the free silver proposal loomed more and more execrable. And many of the men active in business in the late nineties are among the leaders in the business world today; as "centers of prestige," they have transmitted to the younger generation of clerks, business, and professional men the formula that the Democratic party is "unsafe" for business, and should, therefore, be kept out of control of the national government. The leadership by Bryan of the Democracy for another score of years, though Bryan had outgrown his monetary heresy, served only to strengthen the anti-Democratic prejudice.

III

That there is little experiential basis for the dogma that Democratic rule spells hard times is clear enough. And even the factors which engendered this irrational belief have ceased to operate in large part: the Democrats did not differ from the Republicans in their tariff stand last year; the free silver campaign was a solitary episode; and of late years the Democrats in their solicitude for the interests of the business cummunity have come to emulate the Republicans, though the leadership of Governor Smith during the past campaign restored to the democracy, in some part, its ancient rôle as the party of the masses.

Yet, hundreds of thousands of citizens in the recent election, as in the past, ignored their considered views on questions of social policy and cast their votes for the continuance of Republicanism and prosperity. To be sure, there was a shift to the Democratic party of a number of prominent leaders in finance and industry. These accessions to the Democratic camp were widely advertised by the Democratic National Committee in an effort to break down the popular prejudice. But it is doubtful whether they had much success. Armed with inveterate convictions, the rank and file of the business community continued to cling to their shibboleths. Even the

example of their pecuniary idols—the Raskobs and Du Ponts —left them undisturbed. They knew full well that men of "big business" venture occasionally on social and political experiments, but as merchants and dentists they could afford no such luxury.

BOOK REVIEWS

EDITED BY O. DOUGLAS WEEKS

University of Texas

Renouvin, Pierre, *The Immediate Origin of the War*, translated by Theodore Carswell Hume, with a Preface by Charles Seymons. (New Haven: Yale University Press, 1928, xiv, pp. 395.)

Fay, Sidney Bradshaw, *The Origins of the World War*. (New York: The Macmillan Company, 1928, Two Volumes, pp. xiv, 551, 577.)

Of the many books which have tried to explain the responsibility for the war, these two challenge the most attention. Fay's book is the more ambitious, as it devotes the whole of the first volume to a study of the formation and conflict of alliances from Bismarck's day down to 1914. The sub-title of this volume, "Underlying Causes of the War," is something of a misnomer, as little is said of the explosive character of nationalism, the growth of chauvinism among the Great Powers, the historical evolution of the Austro–Serbian feud, and the influence of Anglo–German commercial rivalry. But one can hardly complain if Professor Fay confined himself to diplomatic history, for, as it is, his work is nothing less than a monumental piece of research. It is not for the general reader, however. One must know already conditions in Morocco which made its independence a mockery, and, generally speaking, there is too little said of the value of those stakes of diplomacy which furnished the fuel of war.

Between the second volume of Fay ("Immediate Causes of the War") and Renouvin's book, there seems to the reviewer to be little preference in the point of scholarship, clearness of exposition, and fairness in treatment. If Renouvin is a little partial to the Entente, Fay leans somewhat in the other direction. Renouvin places his characters before you, shows you all the cards in their hands (and those which they know to be in their opponent's hands), and then coldly analyzes the players and the game. Fay's treatment is perhaps less merciless; he realizes the crushing weight of those twelve days, and, except for Berchtold, he gives most of the diplomats credit for good intentions. Renouvin has the advantage of unfolding the drama in chronological sequence—a method which enables the reader to understand the situation, as it developes from day to day, and to uncover the responsibility for the sins, whether of omission or commission, which led to the tragedy. It is almost as though one were reading an exciting detective story—except that the murders occur at the end. Neither of the authors thinks the ultimate crash was inevitable, but due chiefly to the fear on the part of both sides of suffering an humilitating reverse in a diplomatic battle. Fay acquits Germany of evil intentions, but he shows her diplomats to have been guilty of lamentable stupidity.

Renouvin feels—and it seems to the reviewer that he has proved his case—that Germany might have prevented Austria from delivering the famous ultimatum. Fay shows that the ultimatum was much milder

than it has generally been considered, and that none of the other Powers took very seriously the Russo–Serbian suggestion of an appeal to the Hague Tribunal. Both writers blame Germany for having given Austria too much blanket support in dealing with the Serbian crisis, and Fay shows that Austria's belated negotiations were not sincere; he also brings out much more fully than Renouvin the equivocal conduct of France during the crisis. But the reviewer cannot agree with Fay in considering Russia's general mobilization tantamount to a declaration of war. The fact that a Russian staff officer so considered it in 1895 does not make it so in 1914; nor did such an opinion ever bear an official character; certainly in 1914 both the Czar and Sazonov gave the most explicit assurances. The fact that Germany premised her conduct of a war with the Dual Alliance on the condition that Russia's mobilization measures were incomplete seems to the reviewer no excuse for extinguishing the last hope of peace. It is not impossible to conceive that all the belligerents might have faced each other, fully armed, and yet war have been averted.

T. W. Riker.

University of Texas.

Masterson, William E., *Jurisdiction in Marginal Seas with Special Reference to Smuggling.* (New York: The Macmillan Company, 1929, pp. xxvi, 423.)

The present volume is based upon a recognition of the fact that the problems of jurisdiction over marginal seas differ with the subjects in relation to which they are considered. No statement in terms of territorial waters can resolve the multitude of questions arising with respect to fisheries, neutrality, crime, pilotage, collision, quarantine, salvage, customs, etc. International agreement in fact can come only as a result of an appreciation of the points involved in the various aspects in which the problem of jurisdiction over marginal seas may arise. The fact that a volume as large as the present one can be written on the subject of jurisdiction in the prevention of smuggling, with only the most casual references to the problem of general jurisdiction (not a simple matter in itself), and can be confined largely to the English and American law, is proof enough of the importance of special studies preliminary to the settlement of the broader problem of jurisdiction over marginal seas.

The first part of the volume is devoted to a study of the development of the English law. The author emphasizes that changes in English law followed changes in smuggling methods; that in the effort to cope with the smuggling which at times assumed huge proportions the English government never concerned itself with attempting to make its legislation conform to any international standard. Jurisdiction over hovering vessels flying foreign flags was assumed in various legislation at one, two, three, four, eight and one hundred leagues. Provision for forfeiture was made not only when vessels of prohibited construction, or carrying prohibited goods, were within the specified zones, but also when they were discovered to have been within those zones. Modification of these

laws came only when control over smuggling had progressed to the point where they were no longer necessary. Three- and four-league limits for specified purposes are still retained. The author points out that no foreign government ever protested against the British hovering acts.

Early in its national life the United States followed the British example by protecting its revenues through legislation designed to apply to vessels arriving within four leagues of the coast and bound for United States ports. The United States hovering laws were questioned, curiously enough, by Great Britain. There have been no serious challenges, however, and the negotiation of the liquor treaties was dictated more by a desire to obtain a freer hand and to remove the possibility of an impairment of friendly relations through disputes relative to particular seizures, than by a doubt as to the right of the United States to exercise the jurisdiction established in the hovering acts. The negotiation of the treaties, their terms, and the cases arising under them are considered in detail.

The present study is a veritable mine of information with reference to the provisions, interpretation and operation of English and American statutes relating to smuggling. The author has had access to, and made good use of, much unpublished material throwing light upon the earlier statutes. He concludes that in combatting smuggling the extension of authority beyond the limits of territorial waters is based upon a customary rule of the law of nations and is justified; that the subject is one on which international agreement should not be difficult to obtain; and that such an agreement should not be prejudiced by too intimate an association with other aspects of the problem of territorial waters with reference to which agreement may be more difficult.

IRVIN STEWART.

American University.

Hiller, E. T., *The Strike, A Study in Collective Action.* (Chicago: University of Chicago Press, 1928, pp. xvi, 304.)

Of literature pertaining to strikes there has been a plethora, but the feeling underlying Professor Hiller's study is that an important phase—the behavior characteristic of the striking group—has been neglected. As the editor of the series puts it in his introductory note: "The literature of strikes is historical rather than sociological. . . . It is concerned with events rather than with things, with policies and programs rather than with social processes." Professor Hiller, interested in the strike as a collective response to a particular situation, undertakes to meet this need with his analysis of group behavior during the strike and of the techniques used to direct and control it.

No hazardous prophecy is involved in saying that the predominant feeling of students of industrial relations, upon completing the book, will be one of admiration. The author has covered the literature of his field thoroughly; he has presented a wealth of material in systematic array; and he has stated his own conclusions with clarity and restraint.

And should some readers think that they can detect just a little of the propensity, occasionally charged against sociologists, to make the language of the trade an end in itself—well, perhaps that will merely go to show that such readers are not initiated into the mysteries of the craft. An unromantic economist, to be sure, would probably say that "scab" workers are frequently the victims first of abusive language and then of unpremeditated violence, instead of that "the symbolically represented acts which are implied in the verbal assertions and gestures become corporeal in physical participation." But this is picking a rather extreme example from the book, and on the whole the work is remarkably free from the besetting sin of jargonology.

A fairly definite cycle can be observed in the majority of strikes, and Professor Hiller has accordingly organized his study in terms of the typical sequence of events, from the stage of preliminary organization on through the final return to work. The chapters on conditions and maintenance of morale and the means of mobilization are exceptionally well done. A study of the technique whereby subordination to collective aims is induced is no easy task, but the author has done it in fine fashion; and the reader who follows the account of the ways in which hazards are minimized, sentiments attached to other movements are borrowed, and devices for the purpose of getting rid of worker inhibitions are resorted to will have a better understanding of the psychology of the striking group. On the other hand, one feels that a more comprehensive analysis of the gains attained through strikes and of the extent to which the gains tend to be maintained would have been welcome.

Professor Hiller is not greatly worried about the coming of the long-predicted general strike. The conditions essential to the success of a decisive revolutionary strike are that it be inclusive and long-contined, and that the strikers have control organizations which are stronger than those of the rest of the population combined. As a practical matter, these conditions are impossible of attainment, the author holds, because (a) the workers cannot be induced to strike in numbers sufficient to force a far-reaching and abrupt revolution, (b) other classes exercise decisive influence in the control of political devices and economic functions, (c) the opposition of the government is more effective than the passive resistance of the potential strikers, and (d) common interests and mutual dependence between workers and employers raise inhibitions which preclude abrupt repudiation of existing social organization by the majority of workers in industrialized nations.

ROYAL E. MONTGOMERY.

University of Texas.

Wright, Benjamin Fletcher, Jr., *A Source Book of American Political Theory.* (New York: The Macmillan Company, 1929, pp. xi, 644.)

Professor Wright's *Source Book* comes as a genuine blessing to teachers and students of American political thought. The need for such a collection of materials has long been felt, and this compilation most admirably fills that need. It is in every respect a worthy companion volume to Coker's *Readings in Political Philosophy.* Indeed, the work

under consideration is even of greater importance than the one just mentioned, because, as the editor states in his preface, "Most of the classics of European political theory, from Plato to John Stuart Mill, are now to be had in convenient and inexpensive editions, but the writings of American political thinkers are, for the most part, not to be found in similar form. Many of them have never been reprinted, very few indeed in cheap editions. A large proportion of them can be consulted only in the most extensive libraries, and, even there, they are ordinarily unavailable for the student or the casual reader as a result of their rarity and of the bulky character of the collections in which they are found."

The book is divided into nine lengthy chapters corresponding to the same number of rather well-defined periods in the history of American political thought. A number of selections from political writings, debates in important constitutional conventions, collections of important letters, or speeches go to form each chapter. A short but excellent introduction by the editor initiates each chapter and each selection is prefaced by a brief explanatory note. The chapter headings in order are as follows: "The Theocratic Ideal in Early New England," "Constitutional Protest and Revolution," "State Constitution Making During the Revolution," "The Framing and Ratification of the Federal Constitution," "Under the New Constitution," "The Growth of Constitutional Democracy," "The Slavery Controversy," "The Struggle for State Sovereignty," and "Some Recent Tendencies."

Space does not permit the listing of any of the selections of source material used. Suffice it to say that practically all the important American political thinkers are given due space, wise selections are also made from the debates in the Federal Conventions and the outstanding state constitutional conventions. The Jacksonian period, it may be said, is illustrated entirely by excerpts from the debates in state conventions which met between 1820 and 1850. Significant constitutional documents are also included. Of particular interest are the materials illustrative of recent American political thought, which comprise the last chapter. Here are found reprints from the writings or speeches of LaFollette, Gompers, Roosevelt, Wilson, Holmes, Lippman, Al Smith, Hoover, and others.

All that need be said further is that within the space allowed no editor could have made a wiser or better choice of materials. The work gives evidence of extended study, wise judgment, and painstaking effort on the part of its creator. Here we have a true panorama of American political thought.

O. Douglas Weeks.

University of Texas.

Logan, George B., *Liberty in the Modern World.* (Chapel Hill, N. C.: The University of North Carolina Press, 1928, pp. xi, 142.)

A posthumous publication, from the promising pen of a young man whose life was taken in 1927 by an illness which his war-sapped energies could not resist, this little book is apposite and persuasive in predicating

liberty as the sole ultimate guarantor of social progress. On a theme to which much of our best thinking has been devoted, which continues to inspire the writing of histories of civilization and their popularizations, philosophical and semi-philosophical treatises on liberty and its supposed correlates, a book like this is significant as evidencing a widening social conscience rather than for any new illuminating ideas which it has to contribute.

Of the nine chapters of the book the first is concerned with the meaning of liberty, the next five with an outline of the main social and institutional expressions of the growth of liberty in the western world since the medieval period, and the last three with the import of scientific progress, the humanistic spirit, and modern religion. On most of these topics, perhaps all save the last which, to the present reviewer, covers a lamentable confusion of thought incompatible with the humanistic spirit, the discussion moves on firm ground and in the right direction. In general, the book is a good introduction to the more militant and contemporary discussion in the coöperative volume of essays, *Freedom in the odern World*, edited by Horace M. Kallen and written by eminent specialists in various fields, including John Dewey, Walton H. Hamilton, Clarence Darrow, and others.

Discussing the meaning of liberty, Mr. Logan avoids the bog of metaphysical dispute over free-will and determinism, and sees in liberty the practical problem of social and personal development. Liberty is recognized as more fundamental than equality and as having no necessary relation to it. But Mr. Logan feels rather than explains, as do the authors above mentioned, the rationale of freedom, the multifarious ways in which we are deprived of it today, the measures that must be taken to promote it. He is at his best in his chapter on "Liberty and Government." Here he displays keen insight into the failings of democracy, the peril of our worship of the state, the tyranny of majorities, the weaknesses of the older individualism. The chapter on "Liberty and Humanism," which might better have been the conclusion, laments our necessary lack of encyclopedic and humanistic minds. The present-day job of humanism, that of unifying and socializing the sciences, is assigned to sociology as the natural go-between connecting man and nature. Few sociologists are yet ready—the reviewer here sides with the author—to perceive the fact and the implications of the fact that "man is ineradicably a moral being at the same time and to the same extent that he is a social being." Our social sciences will contribute more to humanism when they outgrow their youthful fear that in becoming more social they become less scientific.

Though one may not accept some of the religious premises in the final chapter, one is grateful to find Mr. Logan humanizing religion, and is grateful for the acquaintance with the author.

D. A. Piatt.

University of Texas.

Buell, Raymond Leslie. *Europe: A History of Ten Years.* (New York: The Macmillan Company, 1928, pp. xiv, 428.)

"This book," according to the author, "is not designed for the technician." It is for the general reader who wants some knowledge of predominant tendencies in European politics since the World War. In carrying out the purpose the author has endeavored to trace in broad outline the more important international developments and also the more significant events and tendencies of an internal or national character, not omitting Bolshevism and Fascism.

The discussion of international affairs hinges quite naturally around the peace treaties and their aftermaths—reparations, the Ruhr, French security, Locarno. In taking up the individual states, the author gives most attention to efforts at liquidating the effects of the war, especially at rehabilitating national economic systems, and to the more striking political changes and issues. Two chapters are devoted to Soviet Russia—one to the regime itself and the other to the foreign policy of Soviet Russia. The concluding chapter is entitled "Prospects for Peace"; it breathes a certain hopefulness, as, indeed, does the entire book, hopefulness that seems to center mainly in the League. For, says the author: "It looks as if the destinies of Europe will be decided hereafter not upon the battlefield but in the forum of the League of Nations." Admitting that methods of internal politics will be transferred to the League, he insists, nevertheless, that it is much the lesser of two evils, the other being war. Then, too, the gradual economic and moral "comeback" of most of Europe offers grounds for a certain degree of optimism.

In reviewing any book the critic should keep its purpose in mind. Judged as one written for the general reader this volume is satisfactory. It would manifestly be unfair to criticize it on the score of profundity or of thoroughness of treatment. It succeeds in a rather striking manner in depicting the broad sweep of events and in analyzing problems and tendencies. It is written in a direct, simple, forceful style. It exhibits the impartially critical spirit and attitude of the author. There is, in fact, a certain incisiveness about his criticisms that reflects clear-cut judgments. Yet a commendable spirit of moderation tempers these critical judgments, eradicating all bitterness from them. This, again, harmonizes with the spirit of *rapprochement* that the author professes to detect in present-day Europe.

Excellent as it is in method, purpose, and style, the book contains some defects that the candid reviewer cannot entirely overlook. Some may suspect that it was rather too hastily thrown together. This is evidenced, not by any major defect in plan, but rather by certain obvious errors that seem to indicate that the author might have done well to have checked more carefully the work of his collaborators. To put the Imperial Conference in 1925 is, indeed, a fairly insignificant error (p. 155). To have the Poles at Kiev "removed several thousand miles from their base at Warsaw" (p. 199) merits some slight attention. But to have Rumania deliberately treated as an ally of the Central Powers (p. 291) makes one search for some evidence of a mere slip of words. The evidence is all the other way, for a careful explanation

is given for the decision of Rumania to cast in her lot with Germany and her allies. Rumania was, so we read, "fighting against Russia on the understanding that in the event of victory Bessarabia would fall to her share." Yet a few pages beyond (p. 323) we read that Rumania took Bessarabia from "a former ally, Russia."

But errors such as the above should not be unduly emphasized. The book has outstanding merits, and a careful perusal of it will most certainly give the reader a better, broader, more impartial view of the general European situation than he previously had. Therefore we do not hesitate to pronounce it a worth-while contribution to that rapidly mounting store of literature dealing with post-war developments in Europe.

CHARLES A. TIMM.

University of Texas.

Eldridge, Seba, and Clark, Carroll D. *Major Problems in Democracy.* (New York: The Century Co., 1928, pp. xv, 585.)

In attempting to pass judgment on a book like the one under review, it is necessary to answer two questions. How well have the authors done what they set out to do? Was it worth doing? For information as to the intentions of the authors we turn, naturally, to the preface, from which we learn that the book is designed to meet the need for a text in social science suitable for use in courses offered to high-school seniors. The distinctive ways in which the book undertakes to meet this need are three: first, it "concentrates on fundamental and persistent problems that will confront the coming generation of American students," at the same time avoiding attempts to settle these problems arbitrarily; second, "cases" are liberally provided as a means of connecting the discussions with reality; third, "detailed suggestions for field studies in the given community are offered." If the authors succeed in their aims, we should expect to find their work dealing with selected topics from the various fields of social science, civics, economics, sociology, and so on, in language understandable by students of high-school age, and with emphasis upon the objective and practical aspects rather than on the abstract and theoretical.

We need go no further than the table of contents to be convinced that the authors have taken every advantage of their proclaimed freedom to deal with any social problem which they consider "fundamental and persistent." "Woman's Place in Social and Economic Life," "The Conservation of Natural Resources," "The Organization of Business and Industry," "Our Relations with Other Countries," "Politics and Public Opinion,"—these are sample chapter headings. As we read on we find that the chosen subjects are interestingly presented in clear and simple style, a style that is perhaps a little too simple in spots, but in the main appropriate to the readers for which it is intended. The accompanying case material shows careful selecting. It may be expected to serve fairly well as a substitute for the actual experiences of social life, some knowledge of which is absolutely prerequisite to an understanding of social problems.

Theory, *per se*, receives little attention. We gather, of course, that the authors have a set of social and economic theories in mind, but they keep them unobtrusively in the background. None of the "isms" or other extremist views are insisted upon. The arguments for and against them, if given at all, are presented with a studied attempt to be fair to all concerned. Even evolution, we note, is cautiously referred to by the non-controversial term "descent." About all that can be said concerning the biases of the book is that it tends a little toward an optimistic liberalism, that is to say, it favors certain social changes in the belief that they will result in an increase in the sum of human happiness.

At the ends of the chapters appear the promised "projects for investigation and further study." These are instructions for studies designed to emphasize and clarify the points presented in the text. Some of the studies outlined call for extensive field investigations; others for library work; still others consist largely of difficult questions. The chapters close with selected readings from the best recent works on the subjects treated. It may be seen from this brief consideration that the authors have met their self-imposed obligations very well.

The question as to the value of their work to education can not be answered by so simple a comparison. It is extremely difficult to decide whether a text will meet a need in the absence of even approximate agreement among educators in the recognition and definition of that need. If, however, we admit the desirability of teaching a course in general social science in the high school, as seems, indeed, a reasonable view, the book in hand will prove quite satisfactory. Some objections may be raised as to the actual usefulness of the projects for field work. We may well grant the existence of a need for such work. But the difficulties to be encountered in the attempt to introduce it into teaching practice are numerous. Few teachers are qualified by training to plan and supervise field studies. A knowledge of the community is required which members of the transient profession of teaching can not easily secure. And finally it takes time, much more time than the already over-crowded schedules of both teachers and students will allow. But this, after all, is a trivial fault in a book otherwise so excellent. On the whole, Eldridge and Clark's *Major Problems in Democracy* is a first-class text in its field.

CARL M. ROSENQUIST.

University of Texas.

Woolf, Leonard, *Imperialism and Civilization*. (New York: Harcourt, Brace and Company, 1928, p. 182.)

Here is another offering from an author who has written much—and in a critical vein—of imperialism. Within the narrow compass of this volume he takes up, in six chapters, the general problem; the character of conflicts of civilization before the nineteenth century; imperialism in Asia; economic imperialism in Africa; immigration of Asiatics and Africans into white men's countries as a sort of inverse of imperialism; and finally, the place that the League of Nations might have in aiding

the backward areas in their effort to adapt their civilizations to the requirements of occidental civilizations.

The author's thesis may be thus stated: the reaction against imperialism "is the reaction against domination and exploitation of one civilization and one people over another." Except on the surface, race, religion, and nationality are not the most important factors. They are no more the cause of the present situations than are the spots on the patient's body the cause of the scarlet fever. Antipathy to Oriental immigration into the United States he explains largely on the basis of economic problems. Modern imperialism he distinguishes from earlier expansions of territorial power. In former times a certain degree of political power might have been exercised over large areas inhabited by peoples of varying races and cultures. But the simple types of economic, political, and cultural relations between conqueror and conquered permitted the contemporary existence of different civilizations. Both the Greek and the Roman civilizations were tolerant, so the author asserts, of others. Not so today. Occidental civilization is composed of factors that militate against toleration of other civilizations. It is elaborate, complex, intricate. It has in it "ideas of economic competition, energy, practical efficiency, exploitation, patriotism, power, and nationalism." Dominated by such ideas it can readily be understood that, brought into contact by modern imperialism with other civilizations, western civilization will at once exhibit signs of impatience with the more "quiescent, religious, and formal" system of the Orient. It is so "keyed up" and insistent that to avoid friction, all other systems must conform to it. Some, like Japan, saw this in time and conformed. Others fell before the juggernaut but are now rising again.

A glance at the present international situation in Asia and Africa today serves in part to confirm the author's thesis. The Asiatic situation is "the result of half a century of imperialism and a quarter of a century of revolt against imperialism." It is a revolt that will continue and has already reached the point where it can not be successfully resisted. The only hope is that the Occident might be able to help the Orient make the transition from subjection to independence, a transition that involves an adaptation of western civilization to conditions in the Orient. The alternative, believes the author, may be a conflict "compared with which the Great War was the mildest of evils."

In Africa the conflict is even more clear-cut. For here there are native civilizations even less able to withstand the impact of western civilization than are the civilizations of the Orient. Here the introduction of enclaves of whites in a land already occupied by millions of blacks developed problems of an acute nature. The Kenya system is contrasted unfavorably with the British West Coast system. The imperialism of South Africa (and possibly of Kenya) carries with it the economic slavery and the political subjection of the native. The system of native ownership and native development in British West Africa would leave Africa for the Africans, but would guide the natives, not too hurriedly, along the ways of western civilizations. To allow little groups of whites, as in Kenya and Southern Rhodesia, and even in South

Africa, to take over the best land brings about a situation that is the inverse of the present situation of Orientals in the United States and of the attitude of Americans toward them. It is the author's belief that such enclaves should not be allowed. But "what is sauce for the goose is sauce for the gander."

What could the League do about the grave problems created by this conflict of civilizations? In a word, it is the author's belief that the League might be able to help in the adjustments that Asia and Africa must make to enable them to cope with modern conditions. To nominally independent states, as China, it could help provide "stable government, honest administration, and sound finance." In the mandated areas it could, if Article 22 is honestly executed, set the pace in colonial administration—administration primarily in the interests of the native inhabitants. Finally, it could set its face against the creation of alien enclaves everywhere.

The book is not without defects. It represents the views of the anti-imperialist school. It over-stresses evils resulting apparently from imperialism and glosses over the conditions prevalent in Oriental and African societies before the advent of modern civilization. The present turmoil in China has some relation to certain aspects of modern imperialism, but one is inclined to ask whether pre-imperialistic days in China were at all ideal. Yet, however one may differ with the author on this or that aspect of modern imperialism, it is difficult to escape accepting his conclusion that the conflict is fundamentally a conflict of civilizations, with other factors serving merely as concomitants or symptoms.

CHARLES A. TIMM.

University of Texas.

Warren, Charles, *The Making of the Constitution.* (Boston: Little, Brown and Company, 1928, pp. xii, 832.)

In these days when sundry publishers work their pressmen overtime in putting into print compositions on the American Constitution, it is a matter of no surprise and usually of little moment when a book house announces the publication of another volume on that subject. Americans are paying, and some would say dearly, for their past neglect of the sacred document. Yet occasionally a book appears which is more than a mere reminder of our former indifference, which arrests the attention, and which yields some hours of pleasure and enjoyment at the command of the curious. Such a book is the one under consideration.

The statement that Charles Warren has written another book has come to carry with it the implication that the book is a good one, and that the student of the subject with which it deals (and the interested layman as well, for that matter) would do well to acquaint himself with it. The implication was never worthy of greater consideration than in the case of the present volume; for herein the author has written entertainingly and authoritatively on the making of the Constitution. He has consulted newspapers for their articles, editorials, and letters,

private correspondence, pamphlets and tracts of the day, books, Madison's notes and those of Yates—in short he has examined all of the available material from contemporary pens. The result is a heavily documented (though by no means heavy), synthesized report of the whole proceedings, from the first day to the last; and indeed the preface takes the reader back to Confederation trials and doubts and the conclusion carries him through the process of ratification. Nor has the author been content to quit his task with an examination of contemporary sources: he has delved into a great many secondary writings, and has drawn therefrom such material as would aid his cause. Further, and apart from the main body of his argument, he has included a chapter on "Sources of Knowledge of the Constitution," which is by no means the least useful of the work. And finally, the appendices are of interest to the reader and of material aid to the student who seeks knowledge on the making of the Constitution.

To be brief, Mr. Warren has done a very complete piece of work, and one which must have required prodigious labor. For all this, however, the book is not encyclopedic in its scope. Madison's *Debates* was relied on chiefly for the proceedings of the Convention, yet the author, by frequent recourse to newspaper articles, letters, etc., and by his "Out of Convention" reports, has avoided almost wholly the tedium involved in reading the *Debates*. I say that he has avoided tedium *almost wholly* because occasionally the reader has a feeling that after all this is a rather matter-of-fact account which lies before him. Fortunately, however, these moments come only occasionally; for interest is well sustained throughout most of the work, thanks largely to the diversity of sources used and the author's skill in handling them.

The reader, having finished the book, is likely to wonder what will be the nature of the next work on the Constitution. Mr. Warren's book is, so far as one can see, accurate; it certainly is complete, in so far as one volume can be made complete; it is scholarly; it is interesting, though the author is the first to admit that there are certain shortcomings in the day-by-day method of treatment; and it is well balanced, unbiased, and objective, except for not more than two or three sorties into the field of controversy, during which the author does battle with Dr. Beard and engages in other similar activities. What is there left then for future writers on this subject? An enthusiast might proclaim this the Book of the Constitution. The reviewer will not go so far; but he will reaffirm that it is a very good book.

ROSCOE C. MARTIN.

University of Texas.

Williams, Benjamin H., *Economic Foreign Policy of the United States.* (New York: McGraw–Hill Book Company, Inc., 1929, pp. xi, 426.)

Within the past quarter century, and more particularly since the World War, the economic aspects of American foreign relations have received increased emphasis. This is undoubtedly fortunate; for it is serving to shift attention from mere personal achievements and incidents to the fundamental motives and factors that to a greater degree

than ever before determine the lines of foreign policy. This volume surveys the manner in which the national government has reacted to, and in turn has sought to give some direction to, the increasingly important economic problems arising from a rapidly augmenting foreign commerce and foreign investments.

That the author made a commendable effort to present all important aspects of the general problem is evidenced by the wide range of topics. The volume opens with an introductory chapter on the place of the economic motive and then treats the definite topics under two main divisions, first, the diplomacy of investment, and second, the diplomacy of commerce. In the one he traces the shift of the United States from a debtor to a creditor state and then develops the methods and policies by which the State Department has encouraged, protected, and sought to regulate foreign investments. The second part examines and evaluates the historic commercial policies of the nation, such as bargaining tariff laws, reciprocity agreements, the open door, and the conditional interpretation of the most-favored-nation clause, and then discusses the problem of a merchant marine and the increasing importance of access to foreign sources of raw materials.

The vastness of his project made it quite impossible for the author to give detailed attention to all of its aspects. Nevertheless it may be said without hesitation that he has made an excellent survey not only in point of method but also in topics chosen and in impartiality of treatment. He neither praises nor blames the State Department for its policies; he seeks merely to show the important place that economic interests have in a given diplomatic problem, whether it be in Haiti, in Nicaragua, or in China.

This is as it should be. Too often one is impressed by the apparent fact that an attempt is made to cover the real economic motive with a smoke screen of political or altruistic ballyhoo. We need a healthier, more critical attitude in the matter. American industry and trade, together with their sequence of increasing foreign investments, will more and more determine the direction of our foreign policies. We might as well face the situation in a rational manner instead of falling a victim to the too-prevalent notion that any policy dictated by economic interests is *ipso facto* wrong. In the long view there can be no permanent conflict between justice and real interest. It is generally a question of immediate versus long-run gains. Realism and practicality will help, not hinder, the acquisition of a broad view of national interests. Pragmatism is a far safer basis than is emotionalism in the matter, for it enables us to realize in a quite concrete manner that our permanent prosperity and well-being is bound up inextricably with the prosperity and well-being of our fellow states. A perusal of this volume will surely give the reader a sounder, more realistic attitude toward our foreign relations.

CHARLES A. TIMM.

University of Texas.

Marriott, Sir John A. R., *The Mechanism of the Modern State: A Treatise on the Science and Art of Government.* (Oxford: Oxford University Press, 1927. Two volumes, pp. 938.)

The present study is an attempt to explain the structure and functions of the modern state in terms of the basic principles which control political activity. It is concerned principally with the art or practice rather than with the science or theory of government, though the latter is by no means ignored. The chief purpose of the writer seems to have been to supplement Bryce's *Modern Democracies* by directing special attention to the governments of England and the self-governing colonies.

At the outset, consideration is given to the nature of government, the following bases of classification being suggested: unitary and federal, rigid and flexible, parliamentary and presidential. A brief analysis of some typical democracies is then made. The City State of Greece is taken as an example of direct democracy; the Swiss Confederation affords an instance of referendal democracy; the United States is the outstanding case of presidential democracy. England and the self-governing colonies are discussed at some length as representatives of parliamentary democracy. In the course of such discussion, a good account is given of the machinery of imperial coöperation.

Problems arising in connection with the legislative and electoral branches of government are next reviewed. Among the topics explored are unicameralism and bicameralism, senates and second chambers, the referendum and initiative, parliamentary reform, and minority representation. Considerable space is devoted to parliamentary procedure, stress being placed on English practices. In dealing with the executive branch, the following subjects are discussed: personal monarchy, constitutional monarchy, cabinet government, presidential government, the English civil service, the English executive departments, and the administrative system. The section given to the judicial branch contains a very clear statement concerning the development of the common law and the organization of the English court system. Problems arising in the sphere of local government are now recounted, the issue of devolution being accorded due attention. The position of parties in parliamentary government is carefully weighed. Finally, comparisons are drawn between presidential and parliamentary democracy, which are not entirely favorable to the latter.

The author is to be commended for his diligence in collecting valuable information from numerous sources and for his lucid discussion of certain topics, particularly those relating to the government of England. When he leaves his own country, however, he frequently commits serious errors. Thus, one receives the impression that the President of the United States is still named by an electoral college which acts with full discretion (Vol. I, p. 122). Again, in discussing financial procedure in Congress, it is asserted that the United States has no budget but is entirely dependent on the old system of committees (Vol. I, pp. 554–555). The reviewer is constrained to think that this work would have been improved by limiting its consideration to the governments of England

and the Dominions. In its present form, however, the student of politics will find much to repay his efforts in its perusal.

S. D. MYRES, JR.

Southern Methodist University.

Hervey, John G., *The Legal Effects of Recognition in International Law.* (Philadelphia: University of Pennsylvania Press, 1928, pp. xiv, 170.)

By its title the scope of the present work is limited to the legal effects of recognition in international law as interpreted by the courts of the United States, but the consideration of British cases somewhat widens this scope. There is a brief discussion of such preliminary matters as the nature of recognition and a more extended discussion of the non-controversial topics of recognition as a political function and the retroactive effect of recognition. The more interesting part of the work is devoted to a consideration of the attitude of the courts toward the unrecognized government as plaintiff or defendant where the political departments have been silent on recognition; and their attitude where giving effect to or withholding effect from decrees of the unrecognized government will affect the right of American citizens to property within the jurisdiction of the court. The cases considered are, for the most part, those which have been made familiar by law review notes.

On what is perhaps the most vital point in the problem, and the one which has occasioned most difficulty for the courts, the author's conclusion is: "Where a *de facto* government functions without question, the courts of non-recognizant states should admit this fact and give effect to its acts and decrees in so far as they affect individual rights, where equity and public policy require it to do so, and where such acts are not contrary to the law of the forum."

The book will be of value for its compilation of the pertinent cases, rather than for novelty in presentation.

IRVIN STEWART.

American University.

BOOK NOTES

If the despatches, often intemperate, of small-calibered British and American consuls and diplomats can give us an adequate conception of the conflicting aims and policies of Great Britain and the United States in Latin America during the first three decades of the nineteenth century, then a careful perusal of *Rivalry of the United States and Great Britain Over Latin America* (1808–1830), by J. Fred Rippy (Baltimore: 1929, pp. xi, 322), would give one that conception. Fortunately, the author himself advises us from time to time that London and Washington seldom lost their accustomed calm. That Great Britain, in view of her need of markets, could not, with entire equanimity, see the United States (or any other Power, for that matter) secure a dominant position in Latin America seems quite obvious; that she should, in consequence, exercise a moderate influence against our territorial and economic expansion in that direction, even to the extent of urging the issuance of a

joint self-denying declaration, is equally obvious, as is the fact that the United States would prefer to play a lone hand. It is to the credit of both that the undue zeal and personal pique of their agents never led the foreign offices beyond the bounds of diplomatic propriety. Professor Rippy has given us a valuable survey of despatches during the period in question, even if, in so doing, he had to give considerable prominence to the opinions and personalities of foreign service officers of no particular weight.

C. T.

For many years several national organizations have been interested in efforts to discover and improve alleged weaknesses in civil service laws, administration, and procedure—the Governmental Research Conference, the National Municipal League, the Assembly of Civil Service Commissions, the Bureau of Public Personnel Administration, and the National Civil Service Reform League. In 1924 a Conference Committee on the Merit System was formed, consisting of representatives of these five organizations. The report of this committee entitled *The Merit System in Government* was published in 1926 (New York, National Municipal League, 1926, pp. 170). The committee discusses the magnitude of the personnel problem in the public service and presents a discussion of the Personnel Agency in the Public Service: its functions, form of organization, the law establishing it and the rules under which it operates, and its work from the point of view of the operating officer and the taxpayer. In the appendix are given statistical tables on the number of persons employed in the public service, an outline of suggested functions of a public personnel agency; and the draft of a model law to create a state or city employment commission. The Committee has presented briefly but effectively a summary of the most important principles of a sound public personnel policy.

F. M. S.

California's accomplishments and plans for reorganization of state government are clearly set forth in W. W. Mather's *Administrative Reorganization in California* (Ontario, California, Chaffey Junior College, 1929, pp. 84). In an introductory chapter the author discusses the lines of thought and action since the Civil War converging to bring about administrative reorganization in state government. He then in separate short chapters reviews the recommendations of California Governors for administrative changes from 1889 to 1911; comments upon the main features of reorganization in other states; outlines the organization of California state administration before 1918; and analyzes the progress of reorganization under Governors Stephens, Richardson, and Young. In a concluding chapter he presents his own recommendations for the completion of constitutional reorganization of state administration. The pamphlet contains practical information, useful for California citizens and for students of public administration.

F. M. S.

Congressional Investigating Committees (Baltimore, The Johns Hopkins Press, 1929, pp. vii, 178) by Marshall Edward Dimnock, is a timely study. "For almost a decade congressional investigations have held the center of the political stage." The so-called incidental power of Congress to investigate has become a power of almost independent and major character. The development of this power in the hands of legislative committees is traced from colonial times to the present. Congress has utilized the power, the writer states, three hundred and thirty times since the adoption of the Constitution. In the number of investigations the presidencies of Grant and Harding stand out, but no period of American history has been devoid of investigations. The content of the book largely consists of brief summaries of illustrative cases. In the concluding chapter a summary of the usual criticisms of the exercise of the inquisitorial power is given.

O. D. W.

Sir Arthur Willert, in his *Aspects of British Foreign Policy* (New Haven: Yale University Press, 1928, pp. 141, being his addresses at the Williamstown Institute of Politics in 1927), seeks to establish the thesis that "contemporary British policy really is of some service to the world, not in spite of its being based upon the realism of national necessity, but actually because it is based upon that realism." This is true because England is rather conscious that "the pratical interests, the prosperity, the safety of one state is bound up in the collective well-being of all states." The topics covered relate to British policies towards security, peace, economic recovery, China, and Russia. These topics the author treats in a practical, interesting manner; but he reveals, as is natural, an almost enthusiastic sympathy with the British point of view.

C. T.

Agnes Headlam-Morley's *The New Democratic Constitutions of Europe* (Oxford University Press, 1928, pp. viii, 298) is an excellent general treatise on the post-bellum constitutions of Europe. The treatment is comparative; the first part deals with the origins of the constitutions, their historical background and political theory. Parts II and III present the new developments in the federal form of government and the mechanism of democracy. Two parts follow, having to do with the experimental features of the new parliamentary governments, the attempts to strengthen the executive, the initiative and referendum and the problem of the second chamber. Part VI contains two chapters on the social functions of the state. The book is decidedly useful and informative. It is well written, and is, on the whole, one of the best expositions of these new democracies that has yet appeared.

O. D. W.

Frank R. Kent has added another volume to his writings on practical politics: *Political Behavior* (New York: William Morrow and Company, 1928, pp. ix, 342). He draws his information, as he did in his *Great Game of Politics*, from his own observation of the rough and

tumble of American politics. While his characterizations are keen and stimulating, they may scarcely be described, as they are in the sub-title, as "the Heretofore Unwritten Laws, Customs and Principles of Politics as Practiced in the United States." The machine aspect of politics may seem to be over-emphasized and the book colored by the writer's personal opinions which are at times very decided. However, it is exceedingly valuable to the student of politics, who wishes to know some of the rules which guide our peculiar American animal, "the politician."

O. D. W.

In *The Public International Conference* (Stanford University Press, 1929, pp. xi, 267) Professor Norman L. Hill analyzes the preliminary arrangements, composition, organization, procedure, powers and limitations of the international conference. Emphasis is placed upon the most important conferences subsequent to that of Paris in 1919. The book will serve as a convenient introduction for persons desiring information about the organization and procedure of conferences and will be of value to those who are making a study of a particular conference and desire a standard for comparison with other conferences.

I. S.

The fourth edition of *China Yesterday and Today*, by E. T. Williams (New York: Thomas Y. Crowell Company, 1928, pp. xxiv, 743), brings the historical record down to December, 1928. The current value of this broad survey of the history, social life, literature, art, and political problems of China is thus considerably enhanced. Particular attention is given in the latter part to recent developments. In addition to data contained in previous editions there is a useful key to the pronunciation of Chinese names. The reader will find the book to be a serviceable, entertaining introduction to the study of a land and people destined, perhaps at no very distant future, to be listed among the Great Powers.

C. T.

The second edition of *Leading Constitutional Decisions*, by Professor R. E. Cushman (New York: F. S. Crofts & Co., Inc., 1929, pp. xii, 343), consists of a reprint of the excellent collection of decisions with notes contained in the first edition, to which have been added a Table of Cases and four important recent decisions of the Supreme Court of the United States. The decisions are those in *Olmstead* v. *United States*, *Euclid* v. *Ambler Realty Company*, *Myers* v. *United States*, and *McGrain* v. *Daugherty*. Each decision is preceded by an explanatory note; extracts from dissenting opinions in the first and last are also printed.

I. S.

Conquest: America's Painless Imperialism, by John Carter (New York: Harcourt, Brace and Company, 1928, pp. x, 348), is a journalistic counterblast to the rather numerous effusions of the group of Americans that seems to take a certain pride in assailing our foreign policies. The thesis appears to be that our inevitable economic expansion should not

and probably will not be accompanied by political expansion. Consequently, so we are urged to believe, the Americanization of the world's business will be painless, although we are not informed as to whom it will be painless.

C. T.

An interesting description of the political and economic forces which have determined the control of the international cable and wireless communications facilities in the Pacific is to be found in *The International Aspects of Electrical Communications in the Pacific Area* by Leslie Bennett Tribolet. (Baltimore: The Johns Hopkins Press, 1929, pp. vii, 282.)

I. S.